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MEMOIRS
OF THE AFFAIRS OF SCOTLAND
FROM THE RESTORATION
OF KING CHARLES II

A. D. 1660

BY MR GEORGE MACKENZIE
OF BATHENHURGH

PRINTED AT EDINBURGH

M.DCCC.XXI

MEMOIRS
OF THE AFFAIRS OF SCOTLAND
FROM THE RESTORATION
OF KING CHARLES II.

A.D. 1649.
BY SIR GEORGE MACKENZIE
OF ROSSMOUTH KNIGHT.

PRINTED AT EDINBURGH

MDCCLXII.

MEMOIRS
OF THE AFFAIRS OF SCOTLAND
FROM THE RESTORATION
OF KING CHARLES II.

A. D. M.DC.LX.

BY SIR GEORGE MACKENZIE
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MEMOIRS
OF THE AFFAIRS OF SCOTLAND
FROM THE RESTORATION

OF KING CHARLES II.
A.D. M.D.C.LX.
BY SIR
ROBERT BURNET



OF ROBERT BURNET
PRINTED AT EDINBURGH

M.DCC.CXXI.
The first edition of this work was published in 1704, and in the same year there was printed by W. Johnston, at Edinburgh, a second edition, which was a corrected and enlarged edition of the first.

THE PREFACE.

It is now about a century since there was published a Collection of the Works of Sir GEORGE MACKENZIE, Lord Advocate of Scotland in the reigns of Charles II. and James VII., comprehending nearly the whole of his writings formerly printed, and some others which had till then remained in manuscript *. Among those of the latter class

* “ The Works of that eminent and learned Lawyer, Sir George Mackenzie of Rosehaugh, Advocate to King Charles II. and King James VII., with many learned Treatises of his never before printed,” (“ Edinburgh, printed by James Watfon, one of His Majesty’s printers,”) were published in two volumes, successively, in the years 1716 and 1722. The Proposals for printing this book by subscription had appeared in 1714; and in the same year there was printed by Watfon, (in 8°. pp. 147), a small tract, entitled “ A Discourse concerning the three Unions between Scotland and England: By Sir George Mackenzie &c.—Never before published”: To which there was subjoined the following “ Advertisement.”—“ The chief design of publishing this small Treatise, separately from the learned author’s other Works (which are to be beautifully printed in two large Folio’s by the printer of this Discourse) was, that gentlemen, who had subscribed, or were willing so to do, for the author’s whole Works, might be assur’d of the false report,

which had been at first promised by the publisher, by far the most important and interesting was a History of the Affairs of Scotland from the Restoration of King Charles II. to the death of the author in the year 1691; for the omission of which it was stated in apology, that the manuscript was in the hands of some of the author's relations, who thought it not ready for the press until it should be carefully revised, but that it should be printed as an Appendix to the collection, "how soon they had it revised and transcribed by a good hand †."

"industriously spread about, that the author's manuscripts, being fifteen in number, were destroy'd by an accident; and that a stop was put to the printing of his other Works. But as, by printing of this Discourse, (which was never before publish'd,) the first part of that groundless report is taken off; so shall also the other, in a very short time; all things being now ready to print the whole Works with the greatest care and diligence"

In this Edition of Mackenzie's Works, are omitted his earliest publication, entitled "Aretina, or the Serious Romance", 1661, 12°. and a political tract "on the Discovery of the Fanatick Plot", 1684, folio. Among the miscellaneous contents of these volumes, it will be difficult to find any number of original articles at all approaching to that of the manuscripts stated to have been in the possession of the publisher.

† Vol. II. "ADVERTISEMENT."—"Whereas, in the list of the Author's Manuscripts, there is mention made of an History of the Affairs of Scotland from the Restauration of King Charles II. 1660, to the 1691, which sub-

Of the real nature of this intended revival,—of the person to whom this perilous trust was committed,—or of the causes which may have frustrated his labours, nothing whatever has been disclosed to the public. Among the descendants of Sir George Mackenzie, in whose possession some of his manuscripts are understood to be still preserved, no traditional information remains of the fate of this History of his own times; and for many years past, it has been supposed either to have perished by accident or neglect, or to have been sacrificed to the political discretion of those by whom its publication was originally impeded. Of these conjectures, the last was certainly erroneous; and the former, though approaching almost to the verge of reality, is now ascertained not to be true, at least to its full extent.

About four years ago, a large mass of papers was brought to the shop of a grocer in Edinburgh, and purchased by him for the humblest purposes of his trade. From these, his curiosity induced him to select a manuscript volume, which appeared to him to be something of an historical nature; and

“scribers might have readily looked for in this second Volume, but that Manuscript being in the hands of some of the author’s relations, who think it not ready for the press until it be carefully revised, they have reckoned it more proper to have it printed by way of Appendix to this second Volume, how soon they have it revised and transcribed by a good hand.”

by another and equal piece of good fortune, he communicated this volume to Dr. M^cCrie, the well-known author of the Lives of Knox and of Melville; whose curiosity in whatever concerns the history of his country is for ever active and indefatigable, and whose distinguished intelligence and sagacity are united to the most liberal and communicative spirit. On examining this volume, Dr. M^cCrie very soon discovered, from its tenour and contents, that it was the composition of Sir George Mackenzie: and that in truth it must be a portion of that History of his own times which had been so long a desideratum in Scottish literature. Of this, the intrinsic evidence was obvious and complete; and the manuscript, though written by one of the ordinary clerks or transcribers of that age, was decisively ascertained and identified by numerous corrections and additions in the well-known hand-writing of Sir George Mackenzie himself †.

† The manuscript is of a small quarto form, (about 8 inches by 6,) bound in vellum. The writing is neat and compact, and very uniform throughout. The volume has been mutilated in several places, by cutting out entire leaves or series of leaves; but excepting one lamentable hiatus which must have contained the history of no less than six years, it appears probable that these leaves were mostly blank, and must have been selected by the possessor on that account. The first eighty pages of the volume do not indicate any injurious mutilation; and these exhibit a greater number of minute corrections and additions in the hand-writing of the author than any other part of the work. To these had succeeded that large portion of the volume which has been

It must be regretted that the other literary pursuits in which Dr. M^cCrie has been so usefully engaged, should have prevented him from undertaking the publication of the manuscript he had so fortunately rescued from destruction, and which his minute and accurate knowledge of the history of the period to which it relates would have enabled him so fully to illustrate; but having been pleased to transfer the original volume into other hands, it has been felt as due to his kindness and confidence, thus to place it beyond the reach of further mishap, by printing a few copies of entirely destroyed, and which probably amounted to about one hundred pages. The remainder of the manuscript extends to one hundred and ninety-four pages, and completes the volume.

Since the discovery of this volume, very anxious inquiries have been made, (as might be taken for granted), respecting the other papers among which it was found. Of these, however, nothing has been learned, excepting that they appeared to be the musty sweepings of a writer's or attorney's office; but from the good sense of the person into whose hands they fell, his assurance, that no other portion of the work of Sir George Mackenzie was included in the mass, may be relied on as probably correct.

The manuscript of this volume shall be finally deposited in the Library of the Faculty of Advocates;—a Library which was projected and founded by Sir George Mackenzie; and which those who are truly anxious for the preservation of the muniments of our national history, may be warranted in regarding as at once the richest and securest treasury to which they can be consigned.

it*. In doing so, the text of the original has been followed with scrupulous exactness, excepting in two particulars, which it may be fit here to explain.

The spelling of the manuscript, which may be regarded as that of the transcribing clerk, is of the same motley and unsettled sort that is usually met with in the common writings of that age; which, while it does not afford any instructive illustration of the progress of the language, must often offend, if it does not impede, a modern English reader; and gives an air of rudeness to the composition, which does not truly belong to it. It has therefore been deemed ex-

* A short notice of the discovery of the manuscript, and a few interesting specimens of its contents were communicated by Dr. McCrie to the editor of one of the literary journals. (*Edinburgh Monthly Magazine*, No. III. June 1817.) Nearly three years after the date of this notice, there appeared in another journal, (*Edinburgh Magazine*, April 1820,) an inquiry respecting the fate of the historical manuscript announced for publication by the editor of Mackenzie's Works in 1722; as to which it was observed that, "however partial it might be, yet such a work, from a writer of so great talents, on events in which he had a great part, could not fail to be highly interesting;—and the publication of it would be a material service to British history." The following volume will furnish an answer, at least in part, to this inquiry;—an inquiry to which there was the higher gratification in attending, that it was supposed to come from one pre-eminently qualified to appreciate such a work,—and who, to the fame of a philosopher, a statesman and an orator, has yet in due time to add that of an enlightened, patriotic and eloquent historian.

pedient, though without varying the words, to adapt the spelling to that sort of standard which was usual in the printed works of the age, and of which the other printed writings of Sir George Mackenzie have furnished ample specimens.

The other deviation from the original will require still less apology. Sir George Mackenzie appears to have written his history in many instances from memory, after the events had for years gone by; and in consequence, he is often mistaken, and widely so, in dates. Minute accuracy in dates does not indeed appear to have been very highly prized by our author; and in other works, printed under his own eye, mistakes of this description are not infrequent. In correcting his oversights or omissions, the most authentic records have invariably been consulted; and, as an additional facility to the reader, a series of dates has been introduced on the margins of the printed volume*.

At what particular periods of time the several parts of the following work were written, it would not be easy to ascertain. That it was done progressively, during the course of the author's political life, though perhaps at considerable

* The original manuscript exhibits several attempts to subdivide the period of history which it embraces, into Books; but of these no use has been made, and it has appeared better to give the whole that remains, without any artificial divisions, as a series of fragments.

intervals, may be fairly presumed; and among the proofs of its original composition at an early period after the events which it records, the manuscript exhibits the imperfect erasure of various passages which his later feelings and interests and political connexions had made him desirous of altering or suppressing. In some instances, indeed, this may perhaps have been the operation of that "good hand" to whom the author's relations assigned the task of "carefully revising" the work;—but whatever may have been the occasion or the motive of these alterations and suppressions, it has been thought worth while, in almost every instance, to preserve them; and to mark their occurrence, these passages are printed in Italic characters, and inclosed within brackets.

The only other remark which seems to be necessary relative to the plan of this publication, is, that in various instances, where the author had intended to quote at length certain public documents and papers, for which he had left blanks in the manuscript, the omission has been here supplied from the most authentic sources. The papers of Lauderdale and Middleton, containing the charges and recriminations of those two statesmen, presented to the King in 1663, have been taken from a printed collection of Tracts, of acknowledged authenticity*. All the other documents

* "*Miscellanea Aulica*, or a Collection of State Treatises, never before publish'd. Faithfully collected from their Originals, by Mr. T. Broun." Lon-

inserted in the text have been taken from the Records of Parliament, and of the Privy Council, or from the Books of Sederunt of the Court of Session. The work will perhaps be thought to contain more than a due proportion of such matter; but in that respect, the intentions of the author have been followed out as closely as possible.

On examining the contents of the volume, it will be found that the history of the three first years from the Restoration of Charles II. is complete;—that from the year 1663, to the year 1669, there is a blank; but that from the last of those years, to the year 1679, the series of events, such as the author had intended to give them, is nearly uninterrupted. The work thus breaks off at that point of time when the author's means of exact information had become more complete, by his advancement to the office of King's Advocate; a station in which he was destined to act a most conspicuous part, amidst the distractions and turbulence of that unhappy period.

don, 1702.—This well-known collection is not remarkable for minute accuracy; and it is to be regretted that with all the pains that could be bestowed to give these important papers in a more correct form, they still retain some manifest errors of transcription. It is still more to be regretted that Lauderdale's reply to Middleton's answer has not been found. It is mentioned by himself in a letter written to one of his friends in Scotland, in which he announces his own final triumph over his great political antagonist.

Whether the rest of this history yet exists, or where it may now be lurking in obscurity and neglect, it would be idle to conjecture; yet a hope may be indulged, that, if it does exist, the publication of this earlier portion of the work may possibly be the means of awakening the attention of its possessor, and of procuring a further and still more valuable addition to the materials of Scottish History during the reigns of the two last Stewarts.

GENERAL REGISTER HOUSE,

Edinburgh, May 1. 1821.

THE HISTORY OF SCOTLAND

FROM THE YEAR M.DC.LX.



THE HISTORY OF SCOTLAND

FROM THE YEAR M.DC.LX.

SINCE it is the great design of historians to instruct posterity by the example of their predecessors, I think it most reasonable that we should incline rather to write and read our own history than those of strangers, and those of the present than those of more removed ages, as suiting better with the times and tempers of those who are to be instructed. And seeing it is the great advantage of history, that it rather informs our judgment than satisfies our curiosity, I think that those historians are most to be read and considered, who inform us not only of the great affairs of the world, wherein few are concern'd besides princes and great counsellors, who make up the least part of readers, but such as descend to make observations upon all sorts of people who lived in the age of

which they write; and acquainting us with the rise and circumstances of all that then past, and the motives from which the resolutions then taken were prest, do make us wise as well as learn'd, and teach us not only what was done, but what we ought to do. But because our country-men are more willing to do those things that deserve to be recorded than to write what others have done, I am resolv'd to embrace the last, since I cannot attain to the first; and possibly I may this way, since I can by no other, somewhat curb the insolence of such as, though they fear not the opposition of their country-men, will possibly fear the censure of posterity. Yet pretend I not to write a history, but to leave upon record such observations only as my intelligence could allow me to know, and my other employments to digest: but I may without vanity promise that no man hath writ an history who knew more intimately the designs, and observ'd more narrowly all the circumstances of those actions he sets down, than myself; having been either actor in or witness to all the transactions which I mention, especially since the year 1677, at which time I was made his Majesty's Advocate. And though I give not an account of the fate of great monarchies, yet I beg leave to say, that the events I relate were the product of as much hate, and of as many thoughts in the actors, as actions of much greater splendour.

Upon his Majesty's happy reſtoration to the exerciſe of his government *in anno* 1660, it might have been concluded that our thoughts would have been ſo fill'd with the pleaſures of freedom from tyranny in the ſtate, and ſchiſm in the church, that no room ſhould have been left for complaints and jealousies. But people of all ranks, eſpecially the nobility, were ſo exhausted by former wars, and their expectations were ſo raiſed by the number of employments then vacant, and the ſelfiſh opinion of having deſerv'd all at their prince's hands, to whom and to whoſe glorious father almoſt every conſiderable family pretended to have done ſome ſervice, that moe thought themſelves diſoblig'd by theſe diſappointments, than happy in the general revolution; whilſt thoſe who were advanced thought they were rather payed than gratified, and having miſſed greater employments, undervalued thoſe they poſſeſt, or became diſſatisfied by ſeeing their enemies prefer'd as well as themſelves,

Chancellor Hyde being then the chief miniſter of ſtate in England, a cavalier and episcopall, did conclude that ſuch only as were govern'd by theſe principles were fit to govern under his Majesty, whoſe great ſupport theſe principles were; and ſuitably to this deſign (and for ſecuring to himſelf an intereſt in all the three kingdoms,) he did contribute much to the Marqueſs of Ormond's advancement to be Lievetenant of Ireland, and did procure the Earl of Middletoun to be ſent

Commissioner to Scotland. This employment endures ordinarily no longer than the parliament for which it is granted; but during that time, the power it gives is equal to that of a viceroy or deputy; and therefore when Montrose was made Commissioner of Scotland *anno* 1605, he was ordinarily called viceroy, and is by Spotswood called Commissioner or Deputy of Scotland. It was admir'd why Hyde did not settle him in a more constant employment; but as men are easily flatter'd by prosperity, it was probable that they concluded this commission should have been continued from time to time, or else thought that in time the thesaurer's place should have vaiked, because the Earl of Crawford, then Thesaurer, differ'd from the episcopal party who were to govern.

The Earl of Middleton had by his valour raised himself from the condition of a gentleman to be Lievetenant Generall, *in anno* 1648, under Duke Hamilton; and continued in the same employment *in anno* 1651, when his Majesty was in Scotland: but these armies being dissipated by his Majesty's unkind fate, rather than his ill conduct, he after a wonderful escape from the tower of London, followed his Majesty in his exile, and was sent *in anno* 1653, General into Scotland. He was by his heroick aspect marked out for great things, and was too liberal to be a private person; but this too magnificent humour, which made him value the services of those whom he esteem'd above all rewards, made him oftentimes dif-

oblige such as were not virtuous enough, by promising to them what he hoped to obtain, though he fail'd in the undertaking; by which great men should learn to surprize their dependers with favours, for thereby the benefit is more welcome, and their own reputation in less hazard. His natural courage and generosity made him likewise less jealous both of men and events than a great person ought to have been: but his greatest weakness was, that he prefer'd such to offices of trust as were unfit to serve him in them, regarding therein rather their interest than his own. Nor did he attend his Majesty so frequently as was convenient, but made his addresses ordinarily by Chancellor Hyde; whereas all Kings and great persons love to have their servants depend immediately upon them; and it was observ'd that nothing endeared more any person to his Majesty than personal acquaintance. He was really a man of a manly eloquence as well as aspect; happier in his wit than in his friends; and more pitied after his fall than envy'd in his prosperity.

The Chancellor's place became void by the Earl of Loudoun's compliance with the usurpers, and Chancellor Hyde endeavoured to fill it with the Earl of Lauderdale; pretending thereby to reward his sufferings, but upon design really to remove him from a constant attendance at court. But Lauderdale foreseeing that he who was possess'd of his Majesty's ear would govern all, thought fit to reside at London; and so

that employment was bestowed upon the Earl of Glencairn, a person who honoured it very much by his great parts and greater goodness. The Earl of Rothes was made President of the Council without any competition, and by the joint consent of all the opposite parties; for his youth had as yet suffer'd him to have no enemies, and the subtilty of his wit oblig'd all to court his friendship.

The office of Secretary was not of old esteem'd much in Scotland; and even after our Kings resided in England, that employment was not much valued; both because all the affairs of Scotland were manag'd by eminent favorites, as Somers and Hamilton; and because it was divided betwixt two, whereof one liv'd in Scotland, and another in England. But after his Majesty's return, there was no Scottish favorite at court, and therefore the employment of Secretary was much contended for by the Earls of Lauderdale and Newburgh. Lauderdale pretended his long imprisonment, and the services done *in anno* 1650; and had obtained the consent of the Earl of Lothian former Secretary, to whom a pension of one thousand pound sterling was given in recompence, with the office of Director to the Chancery for his son; and was, because of that and his great abilities, prefer'd to Newburgh, albeit Chancellor Hyde and Middleton stood for him, and that he alleged his Majesty's promise when he was abroad. Nor wanted there many of the Eng-

lish nobility who solisted for Newburgh, and who endeavoured to persuade his Majesty that Lauderdale, being in his judgment an enemy to the church of England, and having constantly opposed his Majesty's friends when he was President to the Committee of both Kingdoms, his service at court would be suspicious. But, to satisfy them, Newburgh was prefer'd to be Captain of his Majesty's guards.

The Earl of Crawford was continued Thesaurer. Marischal was prefer'd to be Lord Privy Seal, that employment having been taken from the Earl of Sutherland. Bellenden was created Thesaurer depute, in place of Sir Daniel Carmichael, who got that employment *in anno* 1649, but was fallen in some disgust with his Majesty, because he had refused to advance the King some inconsiderable sum *in anno* 1650 : whereas Cranston McGill was continued a Senator of the College of Justice, because he assisted his Majesty in his necessities at that time. Sir John Fletcher, because of his alliance to Middleton, was employ'd to be his Majesty's Advocate ; which drew upon both of them the odium of the ablest lawyers, who because of their seniority and abilities thought it their own due ; and upon that account Middleton's interest was much opposed by all that society, whose friendship in Scotland, especially during parliament, ought to be much valued. Sir William Bruce got the office of the Clerk of the Bills, by the favour of Sir Robert Murray ; and

in the nomination of the College of Justice, each great man was allowed a friend or two, till the list was compleat. But because the Earl of Lauderdale charges Tarbet with ingratitude for opposing him who had prefer'd him to one of these chairs, I thought fit to tell that he was nominated by the Earl of Rothes.

The greatest number of rivals were those who fought for the place of Clerk of Register; but Sir Archbald Prymrose, then clerk to the Council, did openly profess that none but himself was able to serve in that employment during parliament; and I remember he told me, that this was the surest method in competitions of that nature; and it did really advance much his design at that time, for no lawyer was on the list with him, and no gentleman was sufficiently qualified for it. But, to secure his claim, he payed down a considerable sum to Sir William Fleming, who had a grant of it from his Majesty during his exile; and he swore a constant dependence upon the Earl of Middleton; [*which oath had its beginning and end from interest.*]

All employments being thus settled, his Majesty, having then no form'd Privy Council, commanded such of the nobility and others as were at court to meet and deliberate what was fit to be done for settling his affairs in Scotland; in which meeting (which was held at the Earl of Crawford's house,

and from which no gentleman was excluded,) it was carry'd by the presbyterians, who were as yet most numerous, that the Committee of Estates, which was nominated by the Parliament at Stirling in *anno* 1650, should meet at Edinburgh, and manage all affairs till the Parliament were assembled. Only Tarbet contended that the Parliament 1650, from which that Committee derived their authority, was no free and legal parliament, all such as had served under Montrose being debarr'd from appearing in it, and was in effect but a continuation of the late rebellion; and therefore, after his Majesty's restoration, none authorized by them should be entrusted with the government. But this overture displeased many of the grandees, who had been involved in that rebellion themselves; and he press'd this argument so violently, that Glencairn (in whose chamber this meeting was,) prevail'd that all the nobility and gentry in town should be consulted in so general a concern; and a meeting being called, they divided equally upon this point; and thereupon seven of both persuasions were sent to the King: and though his Majesty had promis'd to Tarbet that he would own his opinion, and had thanked him most heartily for owning his as his interest, yet he was thereafter prevail'd upon by Lauderdale and Crawford to allow the Committee of Estates to meet; they having represented to the King, that if he disown'd that authority, those who had oppos'd Montrose, who were the far greater part of Scotland, would imagine that

they were all to be destroyed. This was the first breach betwixt Lauderdale and Tarbet; and ever after that time, he was much discountenanced by Lauderdale, who had not before that time got leisure to shift that old aversion he carried for Montrose. It was likewise after some debate concluded by that meeting, that the Parliament should be indicted by a proclamation; albeit Sir John Scott then Director of the Chancery contended, that it should be call'd by briefes out of the Chancery, as the old custom was in time of peace; proclamations being only an extraordinary course used when the other was not practicable. But the lawyers then present advised either way to be legal; and thereupon that by proclamation was prefer'd, and letters were directed to such a gentleman in every shire as stood best affected to his Majesty's service, and whom they wisht should be elected as one of the members to serve; and order was given to him for convening the shire, to the end they might choose their commissioners.

Orders were in the interim sent to Scotland for apprehending Sir Archbald Johnston of Waristoun, who had been President in the Committee of Safety, wherein the King and his family were abjur'd; but he escaped. Yet Sir John Cheiflie, and Sir James Stewart provost of Edinburgh, were secured as prisoners in the castle by the same order.

The Marquess of Argyll, thinking that he had been in no worse favour than the other noblemen who had been engag'd in the same party, took journey for Court, when he heard that they were well received; but he sent his son the Lord Lorn before him, to whom his Majesty exprest himself very kindly, which encourag'd the Marquess yet further. Whereupon after his arrival he went to Whitehall, and sent his son Lorn to desire that he might kiss his Majesty's hands; but his Majesty seem'd to take no notice of the advertisement, till he secretly sent for secretary Nicholas, by whom he directed an order to Sir Edward Walker king at arms, to secure his person; which order was intimated to him whilst he stood in the privy chamber, extremely crowded and gazed upon; from which he was conveyed to the tower in coach, without obtaining leave to speak to his Majesty; which albeit he beg'd most earnestly, was by Sir Edward refused. The English nobility and many ladies, perswaded by the entreaties of his enemies, did that night thank his Majesty for that imprisonment; and it was thought that Lauderdale was not displeas'd to be thus secur'd against an old enemy, who might have become a new rival.

Episcopacy being abjur'd in the Covenant, and repeal'd by several acts of Parliament, the presbyterians did, from the year 1641, govern the church without any division amongst themselves, or opposition from others, till the year 1648; at

which time many learn'd and sober persons having own'd that Engagement which was design'd for liberating the King from his imprisonment, they were depriv'd by the General Assembly, and were in contempt thereafter call'd Engagers. The next schism that did divide that church was occasioned by some too zealous ministers in the west; who by a publick remonstrance declared that it was sinful, and a breach of Covenant, to associate with malignants; under which name they comprehended all such as had serv'd under Montrose, or in the Engagement 1648; and that it was not lawful to admit them to places of trust, or even to use their arms against the common enemy Cromwel: which remonstrance was presented to the Committee of Estates by Sir James Stewart and some ministers, in *anno* 1650, in so insolent a manner, as is reported, that Sir James would take no notice of the King, nor bow to him when it was presented. Such as adhered to this paper were thereafter called Remonstrators; and those ministers who own'd the associations, were distinguished from them by the name of Publick Resolutioners. For clearing which difference, his Majesty having indicted a General Assembly to sit at St. Andrews, wherein the Lord Balcarras did sit as Commissioner, some disaffected young ministers did protest against the same as a prelimited and not a free assembly; consisting only of such ministers and ruling elders as were sent from the respective presbyteries, in obedience to a nomination sent from the court. Thus the presbyterians were

divided by a third schism; the two opposite parties bearing as marks of their divisions the names of Protestators and Assembly-men. And albeit after the usurper had subjected much of this kingdom by tyranny, the occasion of these feuds, as well as all publick assemblies, had absolutely ceased, yet these opposite factions did wrestle against one another, in maintenance of these unnecessary differences, with more zeal than any of them would have done against [*Turks and*] papists: and whatever ignominious speeches the Assembly-men had poured out at first against the episcopal party, these same and worse did the Remonstrators and Protestators, (for these two had join'd in one), throw upon the Publick Resolutioners or Assembly-men, as is clear by the many printed papers yet extant.

Albeit the usurper had chosen the independent form of government as most agreeable to his designs, because it did not allow ministers to meet in any publick assemblies, in which many great troubles were created to the state; yet both the Assembly-men and Remonstrators did court him very submissively by their agents; the Assembly-men having chosen Mr. James Sharp, and the Remonstrators, Mr. Patrick Gillespie, to represent them in his court. Nor was the Protector unwilling to keep up the divisions, keeping both parties in awe by one another: and that neither might want their own protector, General Monk did, by a secret instrue,

tion from him, own the Remonstrators and Broghil (after Earl of Orrery) the Assembly-men. But the inferior officers amongst the English had more kindness for the Remonstrators, both because they pretended to more devotion, and because they considered them as men who had disoblig'd the King. But upon his Majesty's restitution, the Remonstrators fearing justly that his Majesty had an aversion from their principles, they did meet at Edinburgh in the month of April 1660; but before their address was fully ready, Mr. James Guthrie and the chief of them were seized upon, as guilty of an unwarrantable and illegal convocation of his Majesty's lieges: Whereas his Majesty did, upon the other hand, write a letter to the presbytery of Edinburgh, wherein he promised *in verbo principis*, to uphold the government of the church as it was established by law; which phrase, some thought the Earl of Lauderdale his Majesty's Secretary had used, to infer from the King an homologation of the presbyterian government, and an acknowledgment that the laws whereby it was established were valid and binding laws. But thereafter when episcopacy was restored, and this letter objected by the presbyterians, it was answered, that before the restoration of episcopacy all the acts whereby episcopacy was abrogated, or presbyterial government was asserted, were annulled by the Act Rescissory; so that episcopacy being the only church government then established by law, his Majesty was, even by that letter, oblig'd to own it.

The Committee did sit down in August 1660; and amongst other acts, they ordained Colonel Barclay, who had served as a trustee under the usurpers, and Colonel Ker, who had commanded the west country forces which divided from his Majesty's army upon the account of the Remonstrance 1650, to be cited; and because of their contumacy they were denounced fugitives. But thereafter Colonel Barclay was, by Middletoun's intercession, under whom he had served in the late wars, relaxed and pardoned; Colonel Ker still remaining in Holland. This Committee gave also orders to deface the inscriptions which were upon Mr. Alexander Henderson's tomb at Edinburgh, and Mr. George Gillespie's at Kirkcaldy; and ordained a book entitled *Lex, Rex*, wherein so many antimonarchical principles were asserted, to be burnt by the hand of the hangman: Which procedure did immediately alarm the presbyterians; but every man was so afraid of his own case, that no noise was then made upon the account of any publick quarrel.

The Lord Cochrane, being conscious of his guilt in having comply'd with the usurpers, and having a very opulent fortune, which might bait the indigent and starv'd cavaliers to pursue him, did prevail with the Chancellor to recommend him to Middletoun, as a person very fit to augment his Majesty's revenue; which was the great design of all the court at that time, who did hope thereby to supply at once their

own and his Majesty's necessities. Nor did he fail in the undertaking; for Cochrane being introduced to his Majesty, represented to him that, till the Act of Indemnity were past, and whilst the remembrance of the late heavy impositions were yet fresh with the subjects, they would easily condescend to continue any one of the taxes which the usurpers had exacted; and therefore, if his Majesty thought fit, he would undertake to settle an yearly revenue of 40000 *lib. sterling*, by consent of parliament. Upon this overture being agreed to, he with an ample testimony of favour, was sent back to Scotland; and being returned to the Committee of Estates, whereof he was a member, he moved them to command the shires and burghs by a proclamation, to send commissioners to Edinburgh for settling the matter of excise. At the day appointed, they did frequently convene; and it being proposed to them to farm their excise at two merks *per boll*, with certification that if they fail'd, the Committee of Estates would nominate farmers, many of the shires and burghs did absolutely refuse to condescend to any thing that might establish a new imposition, never authorised by any lawful parliament. But others having condescended, the whole shires and burghs were presently farmed; and it was found that the total would amount to the sum promised, *Hinc illæ lachrymæ*;—for thus he secur'd himself by the [ruine] taxing of his country; and this great burden was impos'd originally without consent of parliament.

The Parliament having been proclaim'd by the Lyon King at Arms, and his brethren heralds in their formalities, followed by the Chancellor and all the Committee of Estates, to the twelfth of December 1660, it was thereafter prorogate to the first of January 1661; at which time it was ridden with much pomp, in the usual way. Nov. 1.

In this Parliament, the nobility and all the members were very frequent; and never any parliament was so obsequious to all that was propos'd to them: For the Act of Indemnity not being yet past, many durst not, and because of great expectations and promises, many would not, oppose any thing that was craved: and all ranks and degrees of people had been so lately tam'd into a slavish subjection by the usurpers, that they were ashamed to allow less power to their own King, than to an usurper and mere stranger. 1661.

The Parliament having been opened, by a sermon preached by Mr. Robert Douglas, and Middletoun's commission presented, an act then ready was past, appointing the Chancellor to preside in this and all other Parliaments and judicatories: which last words were added, upon design to establish the Chancellor as president in Exchequer, in odium of Crawford then Thesaurer; and by virtue of this act, Glencairn as Chancellor did preside in Exchequer, till the Earl of Rothes became both Thesaurer and Commissioner; to whom the Jan. 1.

Chancellor at last ceded his precedence. After this act, the Parliament proceeded to choose Lords of Articles; but this constitution was opposed by Tarbet, who contended that, seeing there was no law establishing the constitution of Lords of Articles as necessary, it was therefore arbitrary to the parliament to continue that custom or not; and it was most unreasonable that it should be continued, seeing the parliament was thereby prelimited in their judgment by the preceding vote of the Lords of Articles; as was observed by the Lord Bacon in his discourse concerning the Union, where he proposes this as a form to which England would never submit; and the parliament being only delegated by the people to represent them, they could not delegate others; *nam delegatus non potest delegare*. Notwithstanding of which, the old custom was approved: and this gave occasion to the making of an act, establishing the constitution of the Articles. And in parliaments with us, it is thought unfit and unsafe for any member to start difficulties which he knows will not be well received; for if the difficulty be not pungent, he is contemned; and if it be, then certainly it will be provided against by some act of parliament, either directly or indirectly. Yet many eminent lawyers and antiquaries are of opinion, that of old the Lords of Articles did only propose and prepare articles, to be considered and resolved in parliament; but did not pass any vote thereupon; as shall be hereafter observ'd.

There was at that time also a Committee appointed for Bills and Trade, in imitation of these ancient *Domini ad Quærelas*. Of this Committee, the Lord Cochrane was, by the members themselves at their first federunt, elected president: and because the courts of justice had, for two years after the death of the Protector, been shut, and were not as yet open'd, this court did become another Session: and albeit many poor cavaliers were redress'd in it, against the oppressions they had suffer'd during the former rebellion, yet the forms there observ'd were so summary, and legal solemnities so little regarded, even where they were necessary, and the favour of courtiers did so far influence their decisions, that even those who prevail'd became at last jealous of the events which might ensue upon the arbitrariness to which they were at that occasion oblig'd. And I cannot here but praise our old lawgivers, who have by many acts of parliament appointed, that the parliament should only meddle with making of laws, and should remit the decision of private cases to inferior courts.

During our late rebellions, these who introduced themselves into the government, did invade and seize upon all his Majesty's royal prerogatives; they did levy war, (as our law terms it;) convocate themselves in parliaments, general assemblies, and other publick conventions, without any warrant, and oft-times against warrant from his Majesty; they

made leagues and covenants amongst themselves, and with strangers; and imposed taxations upon the subjects: to remedy which, the Parliament did, by most express acts (not give, for else another Parliament might have taken the same back, but) assert his Majesty's royal prerogative, in the sole raising of armies; in assembling by his own authority, and dissolving parliaments and other publick conventions; in making of war and peace; and declared that all these were, and had always been, inherent prerogatives in his imperial crown. They did likewise appoint the following oath of allegiance, to be taken by all who should be admitted to sit in any publick judicatory. "I A. B. for testification of my faithful obedience to my most gracious and redoubted Sovereign, Charles, King of Great Britain, France, and Ireland, Defender of the faith, &c. Affirm, testify, and declare, by this my solemn oath, That I acknowledge my said Sovereign only supreme Governor of this Kingdom, over all persons, and in all causes; And that no foreign Prince, Power, State, or Person, Civil or Ecclesiastick, hath any Jurisdiction, Power, or Superiority over the same: And therefore I do utterly renounce and forsake all foreign Power, Jurisdctions, and Authorities; And shall at my utmost power, defend, assist and maintain his Majesty's jurisdiction forsaide against all deadly: And shall never decline his Majesty's Power and Jurisdiction; as I shall answer to God."

This oath was immediatly taken by all the members of Parliament, the Earl of Cassillis only excepted, who (refusing to own his Majesty's supremacy in ecclesiastick matters, which was imply'd in this oath) deserted the Parliament. After this the Parliament proceeded to declare the Covenant an unlawful oath, as taken without the approbation of their soveraign, and therefore discharged the renewing of it upon all highest pains. To shun voting in this, many absented themselves; but Balmerinoch, Couper, and some few others, did absolutely retire. Upon this the ministers did begin to thunder after their usual manner, and resolved to issue out remonstrances in the ensuing provincial assemblies: but to prevent any such disorder, Rothes was sent to the province of Fife, Athol to Perth, and some to each of these other provincial meetings; with power to dissolve them if any such thing had been proposed: and by their presence, all disturbances were then quieted, and Mr. Andrew Cant, and many others, who were violent Remonstrators, were deposed. Such also as preach'd before the Parliament, (who were men pick'd out for their enmity to the former rebellion,) did inveigh against the Covenant, and the irregular proceedings of these times; and some were so forward, as to recommend Episcopacy as that ecclesiastick government which suited best with Monarchy, and was most consonant to the word of God.

The Protector had, to maintain his tyranny over Scotland, built four citadels in it, with much art and expences; one in Air, a second at Leith, a third at Perth, a fourth at Inverness; and had planted them with English garrisons. These had till now been continued, by the mediation of Chancellor Hyde, who retained some fear that Scotland was yet too fanatick to be trusted to their own loyalty; and with him Duke Albemarle concur'd, to gratify the officers and soldiers who had serv'd under him, and were yet under his command; and these two had led Middletoun, then Commissioner, into the same belief, who likewise thought fit to have them as a guard to his authority here. But at the constant entreaties of the Earl of Lauderdale, who represented that Scotland had now manifested their aversion from these former rebellious principles, they were removed; and the citadels themselves dismantl'd, seeing his Majesty had no revenues to maintain garrisons in them; and, if they had been kept empty, they might have proved so many defences for such as intended to rebel. The materials and ground whereupon they were built, were bestowed in this manner: Air was disposed to the Earl of Eglintoun, who thereafter employed the same to the manufactory of cloth, newly erected there; Perth, to the magistrates of the town; Inverness, to the Earl of Murray; and Leith to the Earl of Lauderdale, with the privilege of erecting it in a burgh of regality; which he did, to force the magistrates of Edinburgh to buy

it from him; for he boasted to settle a trade there which would break their's: to prevent which, Sir Andrew Ramfay, provost of Edinburgh, did thereafter induce the town to buy it at the rate of 5000 *lib.* sterling; and this was the foundation of his court with Lauderdale, who hated him formerly as one who waited entirely on the Earl of Middletoun.

Thus Scotland was entirely freed from the English soldiers and garrisons; and Lauderdale upon this accompt deserved well of his country, and magnified himself in it as a great testimony of his love for Scotland; and to evidence his affection the more, he did, in presence of his Majesty, sit down and kiss the warrant with great demonstrations of joy. But this excessive boasting, that he had prevail'd in this over Hyde, Middletoun, and all the English, did somewhat contribute to renew the old discords which had formerly been entertained betuixt the nations; and occasioned the making of those severe acts, whereby the Parliament of England debarr'd the Scots from freedom of trade in their plantations, and from enjoying the benefit of natives in the privilege of shipping.

The Parliament of Scotland, taking to their consideration how much and how unjustly this kingdom was injured, by an aspersi^on cast upon it for the transactions at Newcastle in

anno 1647, at which time the King was delivered to the Parliament of England; which was called, in some histories, a selling of the King; did by an express act, condemn and reprobate all that treaty, and declare that the same was no national act, but was only carried on by some rebels, who had falsely assumed the name of a parliament. Nor wanted there many even in that Parliament, who protested against all that procedure, and who had the courage and honesty to cause register that protestation. And I must here crave leave to expostulate with our neighbours of England, for inveighing so severely against our nation, for delivering up their King; seeing he was only delivered up to their Parliament, who first imprisoned, and thereafter murdered him: whereas how soon even our rebels discovered their design, they carried into England a splendid and mighty army for his defence; and when his murder came to their ears, they proclaimed him for their King, and sent commissioners to treat with him, and bring him home to Scotland; and when he was arrived, they did contribute their lives and fortunes for his safety. And albeit some bigot presbyterians did use him unkindly, out of too much kindness to their own principles; yet even these did very generously oppose Cromwell, and such as had murdered their King; as is clear by the attack made by General Major Montgomery at Mufselburgh, and by the Remonstrators at Linlithgow. They fought also two battles for him at Dunbar and Worcester; and suffered

the greatest hardships imaginable. After which, first the Earl of Glencairn, and then the Earl of Middleton, did keep the fields under his display'd banner; nor did ever his Majesty want some Scottis to stand in armes for him in Scotland, till it pleased God, in return of this loyalty, to make them the great instruments of encouraging General Monk, in his bringing home the King; having offered to assist him with their lives and fortunes against Lambert, and having contributed three months cess *per* advance, for payment of his armies. And so remarkable was our loyalty to the world, and amongst strangers, that his Majesty was always called King of Scots; and it was believed and presumed in all places where our nation travelled, whither in England or beyond sea, that a Scot was still a Royalist.

These Acts having past so unanimously, the Commissioner, instigated by Sir George M'Kenzie of Tarbet, who was a passionate cavalier, resolv'd to rescind all the Parliaments since the year 1640; because they were but a series of rebellion. For this kingdom having, *in anno* 1637, begun to extirpate Episcopacy, they did raise an army in defence of that design, and forced the King, at the Birks, *in anno* 1639, to call a Parliament; wherein Traquair was Commissioner; who perceiving that they had established the Covenant by an act, notwithstanding of his Majesty's negative voice, did adjourn the same; against which adjournment they protested. And

yet having hereafter met *in anno* 1641, they forced his Majesty, who was then present, to pass an act for Triennial Parliaments; by virtue of which act, they continued to assemble in pretended Parliaments till the year 1650: whereby it is clear that all these Parliaments had their beginning from force and usurpation. And albeit at first this overture displeased the Commissioner, yet Tarbet urged, that, without rescinding these Parliaments, they could never secure his Majesty's prerogative in calling and dissolving Parliaments; and since this Parliament had declar'd that to have been his Majesty's prerogative, it followed necessarily, that these Parliaments, which sat after his Majesty had dissolv'd them, and without his Commissioner, were unlawful: the force of which argument prevailed with Middletoun to send Mungo Murray, brother to Athol, to consult his Majesty in this affair. But how soon Chancellor Hyde did read his letters, he dispatch'd immediately an express to Middletoun, chiding him for scrupling to pass that act; and entreating him to pass it immediately, as most conducive for his Majesty's interest. How soon it was informed that the Commissioner had intended to urge this Act Rescissory, Mr. James Wood, Professor of Divinity in St. Andrews, did out of an indiscreet zeal go to the Commissioner, and told him that, if he offer'd at it, they would let loose the people upon them. But it displeased not only the fanatics, but even such as had gloried much in the Engagement 1648; for that Parliament fell under the same

condemnation. And some of the best affected, but moderate cavaliers, did not approve it; for they thought it dishonorable for the memory of that incomparable King, to have that Parliament 1641, wherein he sat, rescinded; as they judg'd it a dangerous preparative, to rescind all that had past in a time when the people were made to believe, that these Parliaments were warranted by his Majesty. But to satisfy these, it was provided by an express salvo, that all such private persons as had obtained private rights or securities from any of these Parliaments, or any deriving power from them, should be secure, except they were particularly questioned before the Act of Indemnity; only the Parliament 1649 was absolutely rescinded, without any such salvo; because they had no warrant, even by the bills of Triennial Parliaments; as is clear by the history of these times.

The Excise having been farm'd formerly to near forty thousand pound sterling, the Commissioner brought in an act to the Articles, wherein the Parliament offered 40000 *lib.* sterling to his Majesty as a yearly annuity, whereof 32000 *lib.* was to be levy'd out of the excise of ale and beer, and 8000 *lib.* out of the customs of foreign commodities: and it having easily past the Articles, which consisted of persons who expected each his own share, having all been sufferers, or being favorites for the time, it was brought to the Parliament against the next day, after they were wearied with business; as is

usual in unfavourable cases. And albeit many were afraid of their former miscarriages, and many expected a share, and none had got leisure to consider it, because it was so suddenly brought in; yet the Commissioner thought fit to represent, That his Majesty's affairs were in extraordinary disorder, because of the long interruption of his government, and so required an extraordinary supply; and he hoped they would not grudge to give his Majesty a half of what they had payed to usurpers: That the great confusions, which had lately deprived them both of their liberty and estate, were occasioned by the want of some standing forces, who might have repressed the earliest insolencies, and so have prevented what followed thereafter; nor did any kingdom in the world, except Scotland, want some horse and foot, who might be guards to the peace, as well as the stock of an army in time of war: And seeing his Majesty had removed the English garrisons, in kindness to Scotland, they could not but allow some Scots guards in their place; especially when the old seeds of rebellion were like to grow up again: Nor were guards and soldiers more necessary than money, with which they could be payed; and it was well known that, without a suitable subsidy, his Majesty was not able to defray the ordinary expence of his officers; and it was dangerous for the King, and troublesome and expensive for the subjects, to be always calling Parliaments for renewing necessary impositions: And therefore concluded, that the Lords

of Articles were willing to make offer of a yearly subsidy of 40000 *lib.* sterling, to be settled upon his Majesty; and that this burden might seem less grievous, the act did bear, that this subsidy should only continue during his Majesty's lifetime; and that in recompence of that offer, his Majesty, *in verbo principis*, promised in the act never to impose any cess upon the country, and did discharge what had been payed yearly to the Ufurper. After this speech, the act was past, *nemine contradicente*. But when his Majesty heard of it, he admir'd how, after so many troubles, so poor a people, exhausted by so many oppressions, could have made so liberal an offer; and seem'd rather to pity than thank them: And Lauderdale, either out of love to his country, or out of hatred to Middletoun, to whom (he did forsee) the management of it would be entrusted, cry'd out against it, as an inconsiderate act of prodigality or cowardliness: And yet, so strange and dangerous a thing is advancement, that when he was Commissioner, and when the poverty of the country was much encreased, he would not abate a fixpence of it; but was in accession to the laying on many new impositions. But to return to this new burden; it became the ruin of this kingdom, for it low'd extremely the price of victual, because it heighten'd the price of beer and ale; and when money grew scarce, it forc'd gentlemen to make untimely shifts for its payment; and it forc'd also poor people to leave off brewing; and the exacting of it being entrusted to sol-

diers, who quarter'd till it was payed, they made this a pretext to oppress the country; and they prey'd so uncontrollably upon the remoter parts of the kingdom, who were far distant from the seat of justice, that in effect these shires payed still a double share; and when all was collected, it did either lie idle, or in the Castle, or else was carried by courtiers into England: And thus trade was defrauded by want of a stock, and the country men impoverisht by a lasting and eating tax. Nor did these provisos in the act any way lessen the burden; for it was in vain to think that his Majesty's successors would not pretend, that because their expenses were equal to his Majesty's, that therefore the same subsidy should not be deny'd. And subsidies are, in this, like to the Devil, that both are more easily raised than laid; and when the subsequent impositions were crav'd, and this promise, never to exact any more cefs, objected; it was answered, that his Majesty did not exact or impose any new cefs, but that these were voluntary offers. Pardon me, reader, to entreat thee, that if ever thou become a member of Parliament, then consider what curses are daily poured out by many poor, hungry, and oppressed creatures, upon such as are in accession to the imposing of taxes: for they not only torment poor people for the present, but they make way for new ones; and new taxes are the only means of making old ones seem easy. [*And had it not been for this act, Middletown's memory had been preserved in much more veneration*

amongst the people, the true dispensers of fame, than it is at this day.]

The Marquess of Montrose, the Earls of Bramford and Carnwath, the Lairds of Gorthie, Sana, and Largie, who had been forfaulted for adhering to his Majesty, were in this Parliament also restored; and the Marquess of Montrose his body, which was closed up in a four cornered box and buried in the Burrow-muir, was with much pomp raised and put in the Abbey; from which it was thereafter carried, in form of solemn funeral, to the Church of St. Giles, and buried in the tomb of his grandfather who had dy'd Viceroy of Scotland.

Having thus toucht at the most material of these acts of Parliament which relate to the history of these times, I shall next take notice of such processes as then depended before the Parliament, and have contingency with this history; wherein I will sometimes be forced not to observe exactly the method of time, which is the natural method of history, to the end I may represent more entirely the affair itself. And amongst these, the Marquess of Argyll's process deserves the first place.

After the Marquess of Argyll had remained some time a prisoner in the tower of London, he was sent down by sea under the keeping of Major Grant, who had likeways the

Laird of Swintoun entrusted to him. Being arriv'd at Leith, they were conducted by a guard through the street of Edinburgh a foot: Argyll was cover'd; but Swintoun was discover'd, because he had been formerly found guilty of treason at Perth *in anno* 1651, for having join'd with the Ufurper.

Jan. 31.

Upon the thirty first day of January Argyll had a summons of Treason execute against him, by a herald in his coat; whereupon he petitioned the Parliament, that they would command Sir John Nisbet to undertake his defence; but he having refused, the Parliament did at last command Mr. Robert Sinclair, Mr. John Cunninghame, and Mr. George M'Kenzie, to plead for him.

When we were brought to our first hearing, and enter'd upon the pannel, which was a high place erected near the entry, the Commissioner, who as all Commissioners use to fit in Parliament discover'd, did upon his entry put on his hat, as the custom is when criminals are try'd. The Marquess did, in a long and a serious (rather than accurate) speech, represent his own condition most advantageously; in which, after he had enumerated all the favours that the last King and this had put upon him, he desired them to consider how improbable it was, that he would have entertain'd any design which might have tended to their dishonour; and intreated

those who were capable to understand when these things for which he was challeng'd were acted, what was the carriage of all the kingdom at that time; and how both themselves and others were led on in these actions without any rebellious inclination; and intreated those who were then young to be charitable to their predecessors, and to censure sparingly those actions whereof they knew not all the circumstances: For oft-times the meanest circumstance will alter the nature of the action that attends it; in all popular and universal insurrections, *communis error facit jus; et consuetudo peccandi minuit et crimen et pœnam*; and that he had been amongst the last who entered into the confederacy, and had taken the Covenant. As to what was done before the year 1651, he clothed himself with his Majesty's Indemnity, granted in the Parliament at Perth *in anno 1651*. As to what was done by him since under the usurpers, they were but common compliances wherein all the kingdom did share equally; and in doing thereof many had express allowances from his Majesty, who declared that he thought it prudence and not rebellion, for honest men to preserve themselves from ruin, and thereby to reserve themselves till God should show some probable way for his return: And amongst all those who comply'd passively, none was less favoured by the usurpers than himself; so that what he did was but self-defence; and being the effect of force, could not amount to a crime.

After this speech was ended, we desired that, seeing we pleaded for the Marquess by command from the Parliament in an action of treason, wherein some things might escape us which might be interpreted to be in itself treason, that what we pleaded or spoke might be no snare to us, and that the Parliament would be pleased to consider more our design than our words; which protestation was ordinarily admitted in such cases; and for clearing of the same, we produced that part of the Criminal Register wherein Balmerinoch's process is recorded. After this we were remov'd; and being again call'd for, we were told by the Chancellor that the Parliament would not admit that protestation, lest we might allow ourselves upon that pretext the liberty of speaking things prejudicial to his Majesty's government; and therefore desir'd us to speak upon our hazard.

After this his Lordship gave in a bill wherein he desir'd to be remitted to a trial before the Justice Court, seeing his process would require learn'd judges, being so intricate; nor was it presumeable that every gentleman or burghers could understand debates in law; nor were they his peers, and a nobleman should be judged by his peers. This bill was constructed to be a declining of the Parliament; and the Marquess was put to own it, or else to condescend who had writ it, that he might be proceeded against. This puzzled him very much; and at last we own'd the paper; and after much

debate, wherein we endeavour'd to justify it, the bill was refused, but we were excused. Another bill after this was presented wherein we desired the benefit of exculpation, and to lead witnesses to prove the Marquess' innocency; but both the term and form was then new, though now it be ordinary, and this desire was rejected. Whereupon our defences, with the Advocate's replies, our duplies, and his triplies, in writ, were fully read before the Parliament; and after some debate, the Advocate restricted his pursuits to such acts as were done since the year 1651; which was occasion'd by a letter procur'd from his Majesty, wherein he discharged the Advocate to insist against any man, except for deeds done since his Act of Indemnity granted in that year: Against which letter many exclaim'd, because it destroy'd the hopes of the old cavalier party; and it was then reported that the letter had been surreptitiously procur'd by the Earl of Lauderdale, to secure his own friends, and was shuffled in amongst other papers when his Majesty was in haste.

The procuring of this letter, and some other accidents that had interven'd, did persuade the Commissioner and Officers of State, that the Earl of Lauderdale had now resolv'd to own the Marquess of Argyll as far as was possible: for though formerly Lauderdale, as a most zealous partizan of the Hamilton faction, had been a great enemy to Argyll whilst these two factions stood in opposition; and though

Argyll and his party had decreed to have seized upon Duke William Hamilton and him, who certainly had been executed *in anno* 1649, if the Lord Balmerinoch, who was upon the plot, had not sent him a secret advertisement to flee to Holland immediately [*upon the receipt of his letter; with which he sent him likewise 200 pieces of gold, because they behov'd not to stay to provide themselves if they wanted: to requite which contrivance*] Lauderdale had passionately oppos'd the intended marriage betwixt the King and Argyll's daughter; yet Lauderdale being now rais'd above all hazard of his opposition, and being desirous to lessen Middletoun and to oppose whatever he own'd, did many good offices to the Marquess: and some ascrib'd this assistance to the respect he had still to the good old cause, for which the Marquess mainly suffer'd, and to the intercession of the Lord Lorn, who had married the Countess of Lauderdale's neice, and who stay'd at court to manage his father's business. To balance all which, the Commissioner did send the Earls of Glencairn and Rothes commissioned, as was pretended, by the Parliament, to represent to his Majesty what they had done in his service; but the true design was, that they might oppose all applications that should be made in favours of the Marquess of Argyll: and I remember that the Marquess hearing of the Commission, did immediately conclude himself destroy'd, and his conjecture was very well founded; for Glencairn did daily incense the Duke of Albe-

marle and the Chancellor of England, and Rothés, who was very intimate with Lauderdale and knew very well how to manage his humor, did much lessen Lauderdale's kindness to the Marquess, by representing to him how violently Argyll had persecuted him formerly; what new trouble he might bring to his Lordship's affairs, if he escap'd; and that all his endeavours would at last prove ineffectual, and so it was not prudence to engage too far in a desperate quarrel.

The relevancy of the Articles being discussed, probation was led for proving the late compliance after the year 1651, and his accession to the King's murder, which was excepted out of the letter; and though very many witnesses were adduc'd, yet some thought the probation not full enough. But after the debate and probation was all closed, and the Parliament ready to consider the whole matter, one who came post from London knockt most rudely at the Parliament door; and upon his entry with a packet, which he presented to the Commissioner, made him conclude that he had brought a remission, or some other warrant, in favours of the Marquess, and the rather because the bearer was a Campbell. But the packet being opened, it was found to have in it a great many letters which had been directed by the Marquess to the Duke of Albemarle when he was General in Scotland, and which he reserv'd to see if they were absolutely necessary: and being by these diligent envoys

May 24.

advertised of the scantiness of the probation, he had sent them post by M^cNaughton's servant. No sooner were these produced, but the Parliament was fully satisfied as to the proof of the compliance; and the next day he was forfeited, and the manner of his execution was put to the vote; and being stated, 'hang,' or 'behead,' it was concluded that he should be beheaded, and that his head should be placed on the tolbooth where Montrose's head had formerly stood. The Earl of Crawford, being then President in the Chancellor's absence, desired him to kneel and receive his sentence, which he did; and after it was pronounced, he said that he remembered that he had put the first crown upon the King's head, (meaning at his coronation in Scotland;) and that he hoped God would bestow upon him a crown of glory, for he always wished the King well. He cited likewise that law made by Theodosius, wherein, because he had condemn'd some persons rashly, he therefore ordained that for the future no person should be executed to the death till 30 days after it was pronounced; and therefore craved some time. This he desired because he expected his second son Lord Neill, who was lately gone to court, would procure at least some respite for him. The Parliament seem'd much affected with this great revolution of fortune, and his own carriage, which drew tears from his very enemies; yet by a vote, all delays were refused, and he sent to the tolbooth amongst the ordinary prisoners; from whence he was brought to the cross of

Edinburgh upon the 27th day of May 1661. How soon he May 27.
came upon the scaffold he delivered this speech.

“ Many will expect that I will speak many things, and according to their several opinions and dispositions, so will be their expectation from me and constructions of me. But I resolve to disappoint many; for I came not here to justify myself, but the Lord who is holy in all his ways, and righteous in all his works, holy and blessed is his name. Neither came I to condemn others. I know many will expect that I should speak against the hardness of the sentence pronounced against me; but I will say nothing to it. I bless the Lord, I pardon all men, as I desire to be pardon'd of the Lord myself; let the will of the Lord be done. This is all I desire; only I hope ye will have more charity to me now, than ye would have had at another time, since I speak before the Lord, to whom I must give an account shortly. I know very well that my words have had but little weight with many; as many have mistaken my words and actings. Many have taken me up to be a great enemy to these great works that have of late been brought to pass. But do not mistake me, People: I speak it in the presence of the Lord, I entered not upon the work of reformation with any design of advantage for myself, or prejudice to the King and his government; as my Will, (which was written in 1655, and then deliver'd to a friend in whose hands it still remains,)

can shew. As for these calumnies that have gone abroad of me, I bleſs God I know them to be no more. As I go to make a reckoning to my God, I am free as to any thing concerning the King's perſon and government. I was real and cordial in my deſires to bring the King home, and in my endeavours for him when he was at home: I had no correſpondence with his adverſaries army, nor any of them in the time his Maſteſty was in Scotland: nor had I any acceſſion to his late Maſteſty's murder, by counſel or knowledge of it, or any other manner of way: This is a truth, as I ſhall anſwer to my Judge: And all the time his Maſteſty was in Scotland, I was ſtill endeavouring his advantage: My conſcience bears me witneſs in it. I hope, Gentlemen, ye will remember this, and you Mr. George [viz. Hutchiſon.]

“ I confeſs many look on my condition as a ſuffering condition: but I bleſs the Lord, that he who hath gone before hath trode the wine-preſs of the Father's wrath; by whoſe ſufferings I hope that my ſufferings ſhall not be eternal. I bleſs him that hath taken away the ſting of my ſufferings: I may ſay that my charter is ſeal'd this day; for the Lord hath ſaid to me, Son, be of good cheer, thy ſins are forgiven thee: and ſo I hope my ſufferings ſhall be eaſy; and ye know the Scripture ſaith, that the captain of our ſalvation was made perfect through ſufferings.

“ I shall not speak much to these things for which I am condemn'd, lest I seem to condemn others. It is well known, it is only for compliance, which was the epidemical fault of the nation. I wish the Lord to pardon them; I say no more. There was an expression in my Submission presented to the parliament, of the contagion of these times; which may by some be misconstrued, as if I intended thereby to lay an imputation on the work of reformation: but I declare I intended no such thing, but it only related to the corruptions and failings of men occasioned by the prevalency of the usurping power.

“ Now, Gentlemen, I think there are three sorts of people that take up much of the world, and of this nation. There is the openly profane; and truly I may say, though I have been a prisoner, I have not had my ears shut: I hear assuredly, that drinking, whoring, and swearing, were never more common, and never more countenanced than now. If Magistrates were here, I would say to them, if they lay forth their power for glorifying God by restraining of this, they would fare the better; but if they continue in not restraining of this, they shall fare the worse. I say no more, but either let people shun profanity, or Magistrate restrain it, or assuredly the wrath of God shall follow on it.

“ Others there are not openly profane, (every one will not allow that) but yet they are Gallios in these matters: if matters go well as to their private interest, they care not whether religion or the church of God sink or swim. But whatever they think, God hath laid engagements on Scotland; we are tyed by covenants to religion and reformation; those who were then unborn are engaged to it; in our baptism we are engag'd to it; and it passeth the power of all Magistrates under heaven to absolve a man from the oath of God: They deceive themselves, and it may be will deceive others, that think otherwise. But I would caveat this: people will be ready to take this as an instigation to rebellion in me: they are very far in the wrong that think so, and that religion and loyalty are inconsistent: If any man separate them, religion is not to be blamed, but they. It is true, it's the duty of every Christian to be loyal; yet I think the order of things is to be observ'd, as well as their natures: the order of religion, as well as the nature of it. Religion must not be the cock-boat; it must be the ship: God must have his, as well as Cæsar what is his: these are the best subjects that are the best Christians: and that I am look'd on as a friend to reformation, it is my glory.

“ There is an other sort that is truly godly: to them I must say what I fear, and every one hath reason to fear, (it's good to fear ill.) It's true the Lord may prevent it; but if

he do not, (and truly I do not forsee any probability of it,) these times are like to prove very finning times, or very suffering times: And let Christians make their choice; there is a sad dilemma in the business; fin, or suffer: and truly he that would chuse the better part, would chuse to suffer. Others that will chuse to fin, shall not escape suffering: they shall suffer, but it may be not as I do, [turning him to the Maiden when he spake it,] but worse: mine is but temporal, their's shall be eternal: when I shall be singing, they shall be howling. Beware therefore of fin, whatever ye beware of, and specially at such times. Yet I cannot say of mine own condition, but that the Lord in his providence hath mind of mercy to me, even in this world; for if I had been more favourably dealt with, I fear I might have been overcome with temptations, as many others are, and many more I fear will be; and so should have gone out of the world with a more polluted conscience than, through the mercy of God, now I have. And hence my condition is such now, as when I am gone, will be seen not to be such as many imagine. It is fit God take me away before I fall in these temptations, that I see others are fallen into, and many others I fear will fall: I wish the Lord may prevent it. Yet blessed be his name, that I am kept both from present evil and evil to come.

“ Some may expect that I will regret my own condition ; but truly I neither grudge, nor repine, nor desire I any revenge. And I declare I do not repent my going to London ; for I had always rather have suffered any thing, than lain under such reproaches as I did. I desire not that the Lord should judge any, nor do I judge any but myself ; I wish as the Lord hath pardoned me, so he may pardon them for this and other actings ; and what they have done to me, may never meet them in their accounts. I have no more to say, but to beg the Lord, since I go away, he would bless them who stay behind.”

After he had thrown off his doublet, and was ready to lay his head on the block, he thought fit to vindicate himself of his Majesty's murder.

“ I desire you, Gentlemen, and all that hear me, again to take notice and remember, that now when I am entering into eternity and am to appear before my judge, and as I desire salvation and expect eternal happiness from him, I am free from any accession by knowledge, contriving, counsel, or any otherways, to his late Majesty's death : And I pray the Lord to preserve our present King his Majesty, and to pour his best blessings upon his person and government ; and the Lord give him good and faithful counsellors.”

At his death he shewed much stayedness, as appeared by all his gestures, but especially by his speaking to the people without any commotion and with his ordinary gestures; and his giving his watch to the Earl of Caithness, telling him with a smile that it was fit for men to pay their debts, and therefore having promised him that watch he would now perform it. And I remember that I having told him, a little before his death, that the people believ'd he was a coward and expected he would die timorously, he said to me he would not die as a Roman braving death, but he would die as a Christian without being affrighted. Yet some concluded that he dy'd without courage, because he shifted to lay down his head, and protracted time by speaking at all the corners of the scaffold, which was not usual, and buttoning his doublet twice or thrice after he was ready to throw it off. The scaffold was full of such friends in mourning as he had given up in list, and who were contained in a warrant subscribed by the Commissioner: these carried his body to the Magdalene Chapel, from whence it was convoy'd to his ordinary burial place at Kilmun.

The Laird of Swintoun had, *in anno* 1650, been suspected for corresponding with Cromwell; and being cited to appear before the Parliament at Perth, he absented himself and was therefore forfaulted. This forced him to join with the usurpers, by whom he was preferr'd to be a judge, after Wor-

cester: but upon his Majesty's return he declared himself a quaker, which suited very well with the poverty to which he knew he would be reduced: and albeit some judged his contempt of the world to be only affected, yet I believe it was real; for who would not have contemned so unconstant a friend as it proved to him. Being secured a prisoner in the Gate house, he was sent to Scotland, as we observ'd formerly; and without any new inditement, was brought before the Parliament to receive his sentence; where he spoke so handsomely in his own defence, that he was no more questioned. Some thought that he ow'd his impunity to his poverty and submission; others ascrib'd it to the aversion Middletoun had to the Earl of Lauderdale, who was his only enemy, and enjoyed the estate of Swintoun by his forfeiture, in recompence of the rents of Brunstoun, which Swintoun possess'd by a donation when Lauderdale was forfeited by the Parliament of England.

Sir John Chieslie, a minister's son in the west, had in the beginning of our rebellion advanced himself by being secretary to the enthusiastick woman who prophesied much in favours of the Covenant. Thereafter he was prefer'd by Mr. Alexander Henderson, whose amanuensis he was, to be clerk to the Commissioners who went for England; and having waited upon the Earl of Loudoun and others to the Isle of Wight, he undertook to the late King to serve him

faithfully in the Engagement 1648. But, at his coming to Scotland, he [*is alleg'd to have*] discover'd the whole design, and was purfued as a traitor for that breach of trust, and his other oppositions to his Majesty's interest *in anno* 1649, and for having contumacioufly refused to appear at the Parliament of Perth. At his appearance, his apologetic defence was most unsatisfactory; yet his brother Walter Cheillie became cashkeeper to the Lyon, Middletoun's brother in law, to whom it was suspected Sir John payed a considerable sum of money, by which mean some think he did escape: but others say that he, having been clerk of the Committee of both Kingdoms, and having the registers in his power, whereby Lauderdale's accession to the delivery of the King was alleged to be clearly prov'd, by letters direct from him to the Parliament of Scotland and to the English army, he gave up these registers to Middletoun; who at the agreement betwixt Lauderdale and him *in anno* 1667, gave up the same to Lauderdale, and they were presently burnt.

Mr. James Guthrie was also arraign'd, for being the contriver of the Remonstrance and of the act of the West Kirk, and for being author of the book called *The Causes of God's Wrath*; in which, under the pretext of enquiring into the reasons why God had afflicted this kingdom, he had charged the King and his excellent father with all the blood which had been shed in these three nations. But the article of

treason chiefly insisted upon was, that having preached treasonable and seditious doctrine, he was accused before the King and his Council at Perth, and declined his Majesty and his Council as judges to what he preached, *in prima instantia*; affirming that the presbytery or provincial assembly were only judges competent, *in prima instantia*, to what a minister spoke in the pulpit. This was the rather insisted on, because this principle had not only vexed King James, and was the foundation of much rebellion with us; but by this ministers' conniving with one another's crime and treasonable and seditious expressions, (which might probably be expected from them,) they were secure against the secular power, and might safely condemn the royal authority. And albeit much pains was taken to make him disclaim his opinions, yet he would not desert them; so that when the articles were found relevant, the probation was easy; for he confessed all that was thought necessary, and was thereupon

June 1. convict of treason, and hang'd at the cross of Edinburgh; where he shew much courageous obstinacy, and gained by his death the name of a martyr. Those of his party drencht up his blood with their napkins, which bloody reliques are held in much esteem to this day: Yet it was then reported, that he would willingly have redeem'd his life by a submission, but that the multitude of ladies upbraided him with the very report of what would strike at the root of religion, and so thrust him violently upon his death. And really it

was to be regretted that a more tractable and quiet person had not the keeping of his great parts and courage; for he was both the secretary and champion of his party. Mr. Patrick Gillespie was guilty of the same and greater crimes, having courted the Protector, whom Guthrie really hated; nor had his Majesty so great aversion for any minister as for him, because he behaved himself so insolently in his own presence, and towards his own person. Yet upon a humble submission, (which was the more regarded because it was refused by Guthrie, and might be exemplary to others,) he was at last brought off by the Lord Sinclair and others, with whom he had behaved himself as a gentleman when he was young; and in his case the courtier served the minister: yet his Majesty retained so far his former resentments, that he would never allow him to be brought into the ministry, notwithstanding of many intercessions.

The Laird of Afsint was then staged, but I reserve this process till the third session of this parliament; and Govane was hang'd for joining in the English army *in anno* 1651. But so inconsiderable a person had not dyed, if he had not been suspected to have been upon the scaffold when King Charles the first was murdered; though he purged himself of this when he dy'd, and his guilt was that he brought to Scotland the first news of it, and seem'd to be well satisfied with it. And thus, after several trials, it was found that no

Scottifman was in accefsion to the murder of that incomparable prince. Nothing memorable befide thefe acts and proceffes paft in the firft feffion, which many expected fhould have clofed with an Act of Indemnity; but that was kept up till Epifcopacy, and other things defigned, fhould be firft fettled; and fo the Parliament was adjourned till the 12th of March 1662.

The Earl of Middletoun, after the Parliament was adjourn'd, return'd to Court; taking along with him the Register, and the Acts of Parliament made in the laft feffion; which favour the Register who then govern'd all earneftly defir'd, upon defign to be rewarded for his pains in drawing the Acts fo advantageoufly for his Majefty's intereft. The Chancellor of England, Ormond, and all the cavalier party, had prepar'd his welcome by magnifying upon all occasions his great fervices perform'd in Scotland, by quafhing all the fanatick zeal fo that they even forgot to murmur; and by declaring his Majefty's prerogative, beyond whatever any King of Scotland claim'd when he was prefent. Immediately after his arrival a Scottis Council is called, wherein he gives a full account of his Commiffion, and of what he had done by virtue of that truft; and is highly thereupon magnified by his Majefty, and fuch Englifh Councillors as were admitted to be Councillors for Scotland. And to furprize Lauderdale, Crawford, and fuch others as were fufpect

of presbyterianism, it was order'd that Middletoun should propose a change of the government of the church; and therefore, how soon Middletoun had received his thanks, he spoke to the King thus. " May it please your sacred Majesty; You may perceive by the account I have now given of your affairs in Scotland, that there is no present government established as yet in that church. Presbytery is, after a long usurpation, now at last rescinded; the Covenant, whereby men thought that they were oblig'd to it, is now declar'd to have been unlawful; and the Acts of Parliament whereby it was fenc'd, are now remov'd; so that it is arbitrary to your Majesty, to choose what government you will fix there; for to your Majesty this is, by the last Act of Supremacy, declar'd to belong: But if your Majesty do not interpose, then Episcopacy, which was unjustly invaded at once with your Royal power, will return to its former vigour." Glencairn added, that the insolence of the presbyterian had so far dissatisfied all loyal subjects and wise men, that fix for one in Scotland long'd for Episcopacy, by which no rebellion was ever hatch'd, that government having still own'd the royal interest; whereas [*Calvinism and*] Presbytery had never been introduced in any country without blood and rebellion; as at Geneva, in France during their civil wars, in Holland when they revolted from Spain, and now twice in Scotland; once by the Regent Murray when Queen Mary was banisht, and lastly *in anno* 1637. Rothes likewise said, that though he

had not seen the first rise of that innovation, yet *in anno* 1648, he was witness to their ruining of the Engagement; and *in anno* 1649 and 1650, to their indiscreet usage of his Majesty. Lauderdale answered, that this motion was of greater importance than that it could be seriously determin'd without many thoughts and much information; for upon a resolution in this depended the quiet of this kingdom, who were very unmanageable in matters of religion; and therefore propos'd, that his Majesty might either call a General Assembly, or else consult the Provincial Assemblies of each country; which, because they consisted of ministers and lay elders, would acquaint his Majesty with the inclinations of his subjects there: or, if either of these overtures displeas'd, his Majesty might call for the ablest divines of either opinion to come to Westminster. Middletoun reply'd, that all these three ways tended to continue Presbytery; for it was most probable that ministers who had govern'd all of late, would have such influence as to choose ruling elders of the same minds; and both would be unwilling to quit their hold; or at least the leading men whom the inferior clergy durst not disown whilst that hierarchy stood, durst not quarrel the resolutions of their Rabbis, who would adhere to the oath they had taken and defend stoutly their own supremacy: and therefore, neither a General nor Provincial Assembly were fit judges, nor could they be now call'd together, seeing Presbytery was abrogated; and to call these

were to restore them, and to infringe the Act Rescissory. All being silent after this reply, the Chancellor of England, who observ'd that the Earl of Crawford shun'd to mingle himself with the debaters, press'd his Majesty that all might speak in a case which concern'd all; which he did upon design to force the Earl either to disown Presbytery, or to displease the King, whereby he would hazard his Treasurer's rod, that might fall thereby in Middleton's hands. Crawford thus doubly gall'd, did most passionately press that Provincial Assemblies might be consulted, and assur'd his Majesty that six for one in Scotland were for Presbytery. Nor were the offences of reformers to be charg'd upon the reformation; the best innovations, (said he,) were ever attended with much irregularity; and so it was better to continue that government, which had now past all these hazards and errors which were at first unaccountable, than to hazard upon another, which would be at first unhappy in the same inconveniences. Nor did the Act Rescissory cut off Presbytery; for it was secur'd by acts of General Assemblies, which had been countenanc'd by his Majesty's father's Commissioners, and these were yet unrepeal'd. Duke Hamilton, (who had not as then own'd Middleton, but adher'd still to Lauderdale who pretended to own the old Hamilton interest,) added that the reason why the Act Rescissory had past so smoothly was, because his Majesty had promis'd to continue Presbytery, in his letter direct to the Ministers of Edinburgh. The

Chancellor of England having now Crawford upon this lock, turning to the King, said; 'Indeed, Sir, Lauderdale has spoke like a judicious sober man, and has given your Majesty a very secure advice; (for he us'd to compliment Lauderdale, that his Majesty might think that he lov'd his person, and so might not construct any thing that he said against him as proceeding from malice;) but, Sir, the Earl of Crawford has own'd all that ever was done in Scotland in their rebellion; and God preserve me from living in a country, where the church is independent from the state, and may subsist by their own acts; for there all churchmen may be kings.' Upon this debate his Majesty clos'd the meeting, telling them that he perceiv'd that most voices were for Episcopacy, and therefore he resolv'd to settle it with all diligence. The Chancellor perceiving Crawford in a huff, came to him kindly and told him, that if he were not a rigid presbyterian he would be very much his friend and servant: to which Crawford answer'd, my Lord, I was your friend when you needed much my assistance; meaning that he had interpos'd with his Majesty for him in the year 1653 by letters, when he was like to have fallen under some cloud with his Majesty, by the enmity of the Queen mother and the Duke of York.

Glencairn and Rothes were commanded to return to Scotland, by the instigation of Lauderdale, who thought that

Glencairn did too much fortify Middletoun; and with him his Majesty directed this letter, which was by him presented to the Council upon the 5th of September 1661.

“ CHARLES R.

“ Right trusty and well beloved Coufins and Councillors, right trusty and well beloved Councillors, We greet you well; Whereas in the month of August 1660, We did, by our letter to the Presbytery of Edinburgh, declare our purpose to maintain the government of the church of Scotland settled by law, and our Parliament having since that time not only rescinded all the Acts since the troubles began referring to that government, but also declared all those pretended Parliaments null and void, and left to us the settling and securing church government: Therefore, in compliance with that Act Rescissory, according to our late proclamation dated at Whitehall the 10th of June; and in contemplation of the inconveniencies from the church government as it hath been exercised these 23 years past, of the unfuitableness thereof to our monarchical estate, of the sadly experienced confusions which have been caused during the late troubles, by the violences done to our royal prerogative, and to the government civil and ecclesiastical, settled by unquestionable authority: We, from our respect to the glory of God, and the good and interest of the Protestant religion, from our pious care and princely zeal for the order, unity, peace, and

stability of that church, and its better harmony with the government of the churches of England and Ireland, have, after mature deliberation, declared to those of our Council here our firm resolution to interpose our royal authority for the restoring of that church to its right government by Bishops, as it was by law before the late troubles during the reigns of our royal father and grandfather of blessed memory, and as it now stands settled by law. Of this our royal pleasure concerning church government you are to take notice, and to make intimation thereof in such a way and manner as you shall judge most expedient and effectual: And we require you and every one of you, and do expect according to the trust and confidence we have in your affections and duty to our service, that you will be careful to use your best endeavours for curing the distempers contracted during these late ill times, for uniting our good subjects amongst themselves, and bringing them all to a cheerful acquiescing and obedience to our sovereign authority, which we will employ, by the help of God, for the maintaining and defending of the true reformed religion, increase of piety, and the settlement and security of that church in her rights and liberties, according to law and ancient custom. And in order thereunto, Our will is, That ye forthwith take such course with the rents belonging to the severall Bishopricks and Deanries, that they may be restored and made useful to the church, and that according to justice and the standing law. And

moreover, you are to inhibit the assembling of ministers in their severall synodical meetings throughout the kingdom, until our further pleasure: And to keep a watchful eye over all who upon any pretence whatsoever shall, by discourging, preaching, reviling, or any irregular and unlawful way endeavour to alienate the affections of our people, or dispose them to an ill opinion of us and the government, and to the disturbance of the peace of the kingdom. So expecting your cheerful obedience, and a speedy accompt of your proceedings herein, We bid you heartily farewell. Given at Our Court at Whitehall, the fourteenth day of August 1661, and of our reign the 13th year.

By his Majesties command,

LAUDERDALE."

The Councillors were all mute upon the reading of this letter; only Tweddale and Kincardine press'd that the Council would write back to his Majesty, that it was fit that his Majesty would consult the Provincial Assemblies; for so whatever was the event, his Majesty could not be blam'd. But this was oppos'd, and thereupon Tweddale yielded; and a proclamation was immediately issu'd, discharging all persons who ow'd any dues to pay them to any else, conform to the King's letter; and a letter was returned to his Majesty from the Council, shewing their compliance and satisfaction; and it was appointed to be subscrib'd by all the Coun-

cillors, that it might testify their acceſſion to the reſtoring of Episcopacy, which was ſettled after 25 years interruption.

The Earl of Tweddale, being couſin german to the Earl of Lauderdale, and being ſomewhat inclined to preſbyterianiſm, did thereby draw upon himſelf the Commiſſioner's hatred; and for repreſſing him, a letter was procured from his Maſteſty direct to his Council, 7th September 1661, whereby his Maſteſty order'd his imprifonment, becauſe he had ſpoke ſomewhat in vindication of Mr. James Guthrie, and had voted him not guilty of death. This aſtoniſht ſuch as were preſbyterian; but Tweddale ſeem'd very reſolute, and alleg'd that what he ſpoke in defence of Mr. Guthrie, proceeded not from any kindneſs for his perſon or principles, but that he thought the taking of Guthrie's life neither ſuitable to his Maſteſty's clemency, nor conſequential to his pardoning of greater crimes; and he judged the taking of a miniſter's blood would rather irritate that party, than ſecure his Maſteſty's intereſt againſt them: Nor could he believe that words ſpoke in Parliament were cenſurable to that height, ſince freedom is not only there allow'd, but is alſo advantageous for his Maſteſty's ſervice; and ſince he was, in Parliament, a counſillor upon oath, it ſeem'd ſtrange that matter of opinion which was everie free ſhould be puniſhable in members of Parliament, who are expreſſly indemnified by our law for what is ſpoke by them in Parliament; and at this

rate, every afsifer who abfolves a perfon purfu'd for treason, might be punifh'd, if the major part did condemn. Notwithstanding of which defences, he was by the Council fent prifoner to the Caſtle of Edinburgh, and after ſome days he was, upon his petition, allow'd a confinement in his houſe of Yeſter, upon ſufficient caution to answer when call'd and not to ſtir thence. But thereafter, by the Commiſſioner's mediation with the King, and upon the Council's recommending him to his Maſteſty as a perſon who had dutifully ſubmitted himſelf to his Maſteſty's commands in the propoſal for eſtabliſhing Epiſcopacy, he was upon the Commiſſioner's declaration of the King's pleaſure, though without any order in writ, releaſed from that confinement, 7th May 1662.

For a further eſtabliſhing of Epiſcopacy, his Maſteſty order'd, and accordingly the Council iſſued out a proclamation, the 18th September 1661, commanding all under higheſt pains, that none who were fanatically principi'd ſhould be elected Magiſtrates within any Burgh Royal; which, though it ſeem'd to want an Act of Parliament for its warrant, without which no ſtop as was alleg'd could be put to free elections, yet the Council's proclamation received full obedience. And by another letter, 19th November 1661, his Maſteſty did command the Council to order, that the Queen Katharine, the Queen mother and the Duke of York, ſhould be pray'd for in all congregations; and excus'd his ſending this

command to the Council, by the not restitution as yet of Episcopacy; though hereafter we will see such orders direct in course to the Council, upon ecclesiastick occasions. In the same letter likewise it was order'd, that a proclamation should be issu'd out against papists; and generally it was observable in these times, that whenever any thing was done in favours of Episcopacy, there was at the same time also somewhat done against popery, for allaying the humour of the people, who were bred to believe that Episcopacy was a limb of Antichrist.

Middletoun, apprehending that some letters had been direct in his Majesty's name, concerning the Marquefs of Argyll, without his Majesty's exprefs approbation, and fearing that the Secretary might still use his Majesty's authority after that manner, did procure a letter to be sent by the Council of Scotland to his Majesty, 14th November 1661, entreating that his Majesty would, to prevent all jealousies, and for strengthening their hands in the execution of his royal commands, seal all his letters to them with his own hand: But this was not accorded to by the King, who thought that a great trouble to himself, and a great reflection upon his Secretary.

Dec. 12. In December thereafter, presbyteries were discharged to admit ministers; and upon the 2d January 1662, his Ma-

jefty did by a letter discharge the meetings of all fynods and fefsions; and accordingly the Council did, upon the 19th of that month, discharge them by exprefs proclamation: which procedure was mislik'd by many, as tending to encourage all profanity; fince after that proclamation, there was no vifible authority ecclefiaftick whereby fcandals could be punifhed.

The Parliament having been adjourn'd by proclamation, from the 12th of March till the 8th of May, the Commiffioner did by poft arrive at the Abbey in the night time, to prevent the unnecesfary compliments of friends and flatterers, who refolv'd to have met him at York.

Immediately upon the fitting of the Parliament, they proceeded to eftablifh Epifcopacy; and after the Act for their reftitution was paff, the prefent Bifhops were fent for by the Parliament, and were conducted from the houfe where they waited for the call, to the Parliament houfe, by fome of every ftate, nominated by the Commiffioner for that effect; and were ordain'd to take their feats amongft the Earls, who till then did fit upon the right hand of the throne, the Lords fitting upon the left; nor was this alter'd till the next fefsion of Parliament.

Thereafter the Parliament proceeded to afert his Majefty's authority and fupremacy in cafes ecclefiaftick, and did refcind

May 8.

Sept. 5.

all the former General Assemblies. Episcopacy thus established, an Act of Parliament was past, ordaining a declaration to be taken by all persons in publick trust, whereby they "did sincerely affirm and declare that they judged it unlawful to subjects, upon pretence of reformation, or other pretence whatsoever, to enter into Leagues and Covenants, or to take up arms against the King or those commissioned by him: And that all those gatherings, convocations, petitions, protestations, and erecting and keeping of Council tables, that were used in the beginning and for carrying on of the late troubles, were unlawful and seditious; and particularly that those oaths, whereof the one was commonly called, The National Covenant, (as it was sworn and explained in the year 1638 and thereafter,) and the other, entitled A Solemn League and Covenant, were and are in themselves unlawful oaths, and were taken by, and imposed upon the subjects of this kingdom, against the fundamental laws and liberties of the same; and that there lieth no obligation upon them or any of the subjects from the said oaths, or either of them, to endeavour any change or alteration of the government, either in Church or State, as it is now established by the laws of the kingdom."

The great design of that Act was to incapacitate the Earl of Crawford from being treasurer, and Lauderdale from being secretary; but Lauderdale laugh'd at this contrivance,

and told them he would sign a cartfull of such oaths before he would lose his place: and though Crawford was there-
after turn'd out of his office, yet Middleton miss'd it; and thus we see how God disappoints such as endeavour to en-
slave their native country with unnecessary oaths and en-
gagements. But that which I dislike'd extremely in this new oath was, that it should have been put to Advocates, who are no persons properly in publick trust, and yet were forc'd to take this oath, because it was pretended they had taken the Covenant; and yet this was an ill consequence, for by that rule, the declaration should have been forc'd upon all the nation.

The Earl of Lauderdale press'd so to have the Act of Indemnity pass, that the Commissioner was forc'd to prepare to expedite it; and in order thereto, those who had been ruin'd for the King urg'd, that the eminent compliers under the usurpers, and such as had oppress'd them as malignants, should be fin'd; that thereby others might be deterr'd from rebellion, and that somewhat might be brought in repairing the prejudices and losses which the Cavaliers had suffer'd. This overture pleas'd; and in order thereto trial was taken who deserv'd most that punishment; but the informations were so little examin'd, and the way of procedure was so lax, that many innocent, yea and many loyal persons, were dilated; whilst favour and money secur'd some who were really

guilty. And it was thought by judicious and most loyal persons, that the Act of Indemnity was to be founded upon so general grounds, that it ought to have been extended to all; which suited better with his Majesty's clemency, and the calamity of these times during which these crimes were to be indemnified.

Such as serv'd the King at that time here, considering that Lauderdale, Crawford, and others, oppos'd all that was to be done for Episcopacy, and that thus his Majesty's affairs might, by opposition amongst his servants, receive much prejudice, they resolv'd to entreat his Majesty to except some persons from being capable of publick trust under him: for effectuating which design the Commissioner, the Chancellor, Register, and Advocate, having met at the Chancellor's house in June 1662, they sent for Tarbet, and told him they had resolv'd to send an express to his Majesty, with some Instructions relating to the Act of Indemnity, and that they had pitch'd upon him to be the envoy; which employment he very earnestly declin'd; but at last, being charg'd by them with want of courage, or affection to his friends, he did undertake the affair; and being admitted to be of the Privy Council that afternoon, he was dispatched next morning with these following Instructions, subscrib'd only by the Commissioner, and dictated by the Register.

June 5.

.....

.....

When he arriv'd in London, he did, according to his order, apply himself to Chancellor Hyde, and was admitted to kiss the King's hands, before Lauderdale knew of his arrival; and by this procedure, Lauderdale was render'd very jealous of this negotiation. His Majesty having read the Instructions, and having discours'd much with Tarbet upon them, did order the Council for Scotland to be call'd. Before that Council did sit, Tarbet waited upon Lauderdale, and acquainted him he was sent there by the Commissioner, with a draught of the Act of Indemnity; a copy whereof he deliver'd to him, but kept out of that copy the clause relating to the excepting persons from publick trust, and to the fines.

The Council being call'd and very frequent, each party having invited their friends to be present, Tarbet told his Majesty, that his Commissioner in Scotland had, by his Majesty's command, hastened to pass his gracious Indemnity to that nation; but that he would not adventure upon an affair of that import till he had first consulted his Majesty; and therefore he had by him sent a copy of that Act, together with some Instructions; both which he produced, and they were accordingly read at the board. Lauderdale finding that the copy presented in Council did relate to a warrant for excepting persons from publick trust, did inveigh

with much passion against Tarbet, as a most disingenuous person, and as having different Acts of Indemnity; because the Act presented to him had no such clause. To which it was calmly answer'd by Tarbet, that the Secretary was not to know his Instructions; a main article whereof was founded upon a humble desire to his Majesty, to except some persons from publick trust; and that the Secretary desir'd only a copy of the Act of Indemnity, which he had deliver'd to his lordship as a private person. Lauderdale having thus branded his adversary, (as he conceiv'd), proceeded to exclaim against the desire of excepting persons from publick trust, as most unfit and unjust; urging that, when all the nation was to be indemnified for open and constant rebellion, it was not equal that some few should be excepted; for to exclude men from publick trust, was equivalent to forfeiture; and none ought to be so punish'd, except the names of such as were desir'd to be excepted were first express'd, that his Majesty might consider their special condition and desert; and that these ought to be pursu'd legally, and not punish'd without hearing, in an arbitrary manner. To which Crawford added, that to except any from being capable to serve the King, did lay a restriction upon his Majesty, whose royal prerogative it was to name his own officers and servants; and if this were once allow'd, the Parliament would still pull from his Majesty such as serv'd him faithfully; nor would the King's officers, after this precedent, depend upon him

but upon his Parliament, whom they behov'd to flatter, and with whom they would be forc'd to comply in all designs, even against his Majesty or his government. To which Tarbet answer'd, that all the nation were now involv'd in so much guilt, that none could allege he was unjustly dealt with, when his life and fortune were secur'd, though he was not allow'd by his Majesty to serve him in a publick capacity: And therefore legal trials were not necessary, since his Majesty may remove his own servants without a process; nor was his Majesty's royal prerogative imping'd upon by this overture, since this was to be done by his Majesty's allowance, and was to receive its authority from his own royal command: And in this he did only delegate his Parliament, to enquire for him into the present condition of his servants; by which means he would know who were fittest to serve him; for it was not to be asserted, that they who had been so obedient and liberal to him, would give him an unfaithful advice; and would likewise remove from himself, the odium of removing such as were unfit: And as it was hard for his Majesty to know the persons employ'd, having liv'd so long and so far from this kingdom, so if his Majesty did not allow their advice, he might slight it, and was not in hazard to have his servants to depend upon the Parliament. The Duke of York, the Chancellor, Ormond and others, seconded Tarbet; and his Majesty did openly shew that he inclin'd to his part in the debate.

The whole English court, weary of Lauderdale's insolence, did afsift Tarbet, and magnified all he did or faid; and it was always Tarbet's great defign to raife Lauderdale to fuch paffion as might make him extravagant [*and ridiculous.*]

His Majefty commanded to recall the remiffions paff in favours of private perfons, and order'd that they fhould be ftopt at the Seals: he likewife granted warrant for excepting any 12 perfons from publick truft, whom the Parliament fhould name; and defir'd that a new Council fhould be call'd, wherein he would advife how to eftablifh five perfons at London, by whose advice all matters relating to Scotland fhould be manag'd. But before the diet appointed, this new accident interven'd.

The Lord Lorn, after the death of the Marquefs of Argyll his father, had been own'd by the Secretary, in odium of Hyde and Middletoun; but he practis'd fo far fome of Hyde's minions, that upon promife of a thoufand pounds fterling, they had promis'd to reconcile him to Hyde: Whereupon Lorn wrote to the Lord Duffus a letter, wherein he told him that he had prevail'd with a nobleman in England to take off the great man upon whom Middletoun depended, if he could get 1000 *lib*; and that being done, he hop'd this was but a gowk ftorm: and after fome expreffions concerning the Parliament, he added, "and then the King

will see their tricks." This letter being intercepted at the post house, was carried to Middletoun, who brought it into the Parliament; and after reading of it, it was concluded June 24. that these words, "and then the King will see their tricks," was a high reflection upon the Parliament, and a lying betwixt the King and his Parliament: and therefore a letter was direct by the Parliament to his Majesty, wherein they sent him this letter, and entreated him to send down the Lord Lorn to be tried by them: In which letter they recommend Tarbet to his Majesty, as a person of great abilities, and of known loyalty, and to whom they had entrusted in this and all their other addresses to his Majesty. This letter coming to Tarbet's hands, Sunday morning, a Council was by his Majesty call'd that afternoon, in which Tarbet prest that he might be sent down prisoner; which Lauderdale oppos'd, knowing how great a disadvantage it is for a pannel to appear at the bar a prisoner; and hoping, if he prevail'd in this, it might induce the Parliament to believe, that the King did not much value the accusation. But Tarbet pleading that this was treason, and so notailable, Lauderdale prest to be receiv'd caution for him, life for life; and though Tarbet urg'd that even this was not receivable, because no man can bind life for life, no more than he can murder himself, *et nemo est dominus suorum membrorum*; yet at the Chancellor of England's earnest desire, this offer was accepted; by which the Chancellor design'd to render Lau-

derdale odious to the Parliament of Scotland, in becoming surety for one who had abus'd them; and to engage likewise all Lauderdale's enemies against Lorn, whose person he hated passionately. This being concluded, it was order'd that Lauderdale, Newburgh, and Tarbet, should intimate his Majesty's pleasure to Lorn: and as they went from Council, his Majesty commanded them to cause Lorn condescend upon that person, who had undertaken to move the Chancellor to be his friend for 1000 *lib*. In obedience to which commission they went, and finding Lorn in Lauderdale's lodging attending them, Lauderdale reported his Majesty's commands; and Lorn did with a ready submission, engage to repair to Scotland. But being desir'd to condescend upon the name of that briber, he seem'd astonisht, and begg'd that he might reveal that secret to his Majesty only: but this being refus'd by Lauderdale, who told him that he was not to see the King's face, this answer did extremely confound him; and both of them being struck by it into a thoughtfulness that drew tears from them, Tarbet was thereby mov'd to condescend, that Lorn should write to his Majesty; and the letter having express'd the name of that undertaker, was shewn to Chancellor Hyde, whose favour was ever after lost by the undertaker.

The King thought not fit, after this, to move in Council the overture for five Scottish Councillors' residence at White-

hall; but wrote an order for that effect, without acquainting Lauderdale, and left the nomination of the persons to his Commissioner. As also he order'd, that 12 persons should, in the Act of Indemnity, be excepted from publick trust; and that the late remissions, granted to disaffected persons by Sir Robert Murray's mediation, should be recall'd.

Now Lauderdale was brought so low, that his Majesty would close the door upon him when he call'd in Tarbet. He was undervalu'd by his enemies, and deserted by his friends; and if prosperity, (which like all ripe things does soon corrupt,) had not betray'd Middletoun and his friends to too much arbitrariness, and want of circumspection, Lauderdale had sunk under the weight of his own misfortunes. But upon Tarbet's return, in a meeting at the Abbey, it was propos'd by Tarbet, and seconded by the Duke of Lennox and Newburgh, that the persons to be excepted should be excepted by billeting; every member of Parliament giving, in a private paper or billet, the names of such as he desir'd to be excepted; and by comparing these billets, it should be concluded who were, by plurality of votes, to be discharg'd from serving in any publick trust. This way seem'd new to all, and to the present officers seem'd dangerous, as a way whereby their places might be soon taken from them by a Parliament, which loves always to see publick ministers chang'd. It was also urg'd against this way, that it was un-

juft; fince private men might by it have a liberty to billet the beft of fervants, and fo his Majesty might have his deareft and loyaleft fervants thus pull'd from him. But to this it was anfwer'd, that none would dare openly to vote the removal of any prefent officer, being ftill jealous of the event, and fure of their refentment; fo that his Majesty fhould never have impartial advice without this new method; nor was his Majesty's fervice or intereft in any hazard, feeing his Majesty was to have this but as an advice, without being concluded by it. And as to the intereft of the people, it was moft advantageous, becaufe it oblig'd publick minifters to be afraid of difobliging the Parliament, and their native country, and it did allow to every man a free liberty to vote according to his judgment and confcience: Nor was it neceffary in this vote that the perfons fhould know their crimes, fince they were not to lofe life or eftate by this vote; nothing being defign'd by it but a faithful advice, from a faithful Parliament, to an abfent Prince, concerning the election of his fervants; which advice he might admit or reject at his pleafure, without difobliging the Parliament, feeing the Parliament was not to know the names of fuch as were billeted: whereas upon the other hand, if the Parliament fhould openly vote the exclufion of 12 perfons from all publick truft, his Majesty could not refufe his concurrence in it, without differing from his loyal Parliament. The practice of elections by balls at Venice, and the Grecian Ostracifm,

were adduc'd likewise, in fortification of this overture; and it being overtur'd into the Articles, it past without a contradictory vote, though not without some debate; and this way was by the Articles prescrib'd for ordering that affair. First, every member of Parliament was to write, with a borrow'd hand, the names of twelve persons; and these were to be given in to the Register, who was to hold a bag at the foot of the throne, wherein these billets were to be thrown; after which, the bag was to be seal'd, and to be carried up to the Exchequer Chamber, where they were to be compar'd; and after the number was agreed upon, the billets were to be burnt, and the names of such as were billeted to be conceal'd upon oath. Which form was thereafter punctually observ'd; only the Register, having a rooted quarrel against Southesk, did mark his billet with a nip, when he receiv'd it, and thereby discover'd his vote. And thus the Act of Billeting past, with the consent and approbation of all that Parliament, which thereafter rescinded it; the Earl of Hadingtoun only dissenting, who I believe follow'd in this his own persuasion, as well as the interest of Crawford his father in law, one of those against whom the billeting was mainly design'd.

The noise of these Acts came no sooner to Lauderdale's ears, than he askt the King, "What if they billet me, Sir?" To which the King having answer'd, that they durst not trouble his servants; then Lauderdale told him that he was billeted,

and that the Commiſſioner had not ſo much as aſk'd his Ma-
jeſty's advice in pulling his ſervants from him, the Acts
being already toucht with the ſceptre; whereas former Com-
miſſioners touch'd no Acts without conſulting their maſter;
at which procedure his Maſteſty was highly offended.

Sept. 9. The Act of Indemnity thus paſt, and theſe Acts of Billet-
ing and Fining being ſeal'd up by the Commiſſioner, after
they were touch'd with the ſceptre, the Duke of Lennox,
the Earl of Dumfries, and the Lord Tarbet, were ſent ex-
preſſly and immediately with them to his Maſteſty; but
having addreſt themſelves firſt to Chancellor Hyde, they
were ſeverely check'd by him for introducing that new way,
and for their raſhneſs in billeting Crawford, Lauderdale, and
Sir Robert Murray, who were his Maſteſty's preſent ſervants,
And it was certain that Hyde hated this courſe, as that
which might be follow'd againſt himſelf in England; and
therefore when Lauderdale had firſt told him of the billet-
ing, he had ſaid that it was Lauderdale's own contrivance, as
a mean to break Middletoun; which anſwer being brought
to the King, did breed in him a yet greater averſion to the
billeting, as a procedure equally condemn'd by Middletoun's
friends and enemies: And this made Chancellor Hyde's
friends blame his raſhneſs, in condemning too ſoon and too
openly his own party; weakening thereby his own depend-

ers, and teaching his enemies that he was afraid of the billeting, as a mean by which he might be ruin'd.

When they came to kiss his Majesty's hands, he seem'd displeas'd but not angry at the billeting; and after unsealing and reading of these Acts, he threw the Act of Billeting into his cabinet, declaring that he could not follow their advice, nor would he disclose their secret.

Tarbet finding his Majesty dissatisfied, did at his parting from him, protest that he design'd nothing in that affair beside the serving of his royal interest, and the suppression of those discontents that were like to grow amongst his servants, and the prevention of that ruin which the cavaliers of Scotland were like to suffer by Lauderdale's influence; and therefore entreated his Majesty might not misconstrue him in it, nor believe Lauderdale in any thing to his disadvantage, as being his open and malicious enemy; which his Majesty promis'd, and having given him a kiss of his hand upon that promise, did send him back to Scotland.

Middletoun, after the Parliament was adjourn'd, made a progress into the western shires, to let them see the authority which they had so much oppos'd: and having kept Council at Glasgow, he by Act of Council in October 1662, Oct. 1. discharg'd all ministers from preaching, who wanted lawful

presentations from the patrons, who would not receive collation from the Bishops. This act threw out 200 ministers at once; and was blam'd by all wise and good men, as tending to irritate a country which was fond of its ministers; and as that which join'd them all in one common discontent.

Whilst he was in the West, Tarbet return'd and assur'd him it was fit he should haste to court, to maintain his own declining interest: Whereupon he hastened up, and a Council being call'd, Middletoun therein gave an account of all his proceedings in Scotland. After which account was ended, Lauderdale made this ensuing speech against; which, because it was the great masterpiece of his life, I have here insert.

1663.
Feb. 5.

.....
“ May it please your Majesty,

“ On Thursday the 5th of February, I did deliver my opinion to your Majesty, in presence of these of your Privy Council of Scotland here. I had your Majesty's gracious allowance to speak freely; what I said was conceived to be a charge against the Earl of Middletoun, and it was desired that he might have it to answer. I then said, that what I had spoken, was not spoke as an accuser, but as one who hath the honour to serve your Majesty, as your Secretary for Scotland, and as a Privy Councillor: Yet what I had there

faid, and in that capacity, I declared myself very ready to put in writing, and to deliver it to your Majesty, to be disposed of as in your royal wisdom you should think fit. In pursuance of which, I here humbly tender to your Majesty the substance of what I faid; and in what may relate to the Earl of Middletoun, the very words, as near as I am able.

“ I told you Sir, the occasion of this Council is new and very extraordinary. The good old way hath been, for Kings to consider of Acts prepared, before the royal assent made them laws; but here your Majesty is put to an aftergame. Your royal assent is given to some Acts without your knowledge, and I doubt it shall appear against your declared pleasure; and now your Majesty comes to the consideration of them. And because on this subject I was to speak with some seeming disadvantage; either I might be suspected to reflect on your Parliament, or to talk my own concern; I promised to avoid both these rocks. I declared my high respects to this your Parliament: I mentioned, as well as I was able, the great services they have done you: I named the Acts, and made bold to tell you on that occasion, for your honour and the honour of this Parliament, that these great Acts have been done by the power of your authority, and by the dutiful affection of this your Parliament. That such is the duty of the much greatest part of that kingdom in general, such is the eminent loyalty of this Parliament,

that no one man, albeit he had the advantages of great birth, power, alliance and extraordinary parts, could with any justice arrogate the praise of this great work. I appeal'd to your knowledge of that kingdom, that whoever had been honoured with the exercise of your authority, should certainly with much ease have done the same things; Therefore I am far from rubbing in the least upon the reputation of this Parliament; and as far from being swayed by my own concern; which in all humility I had from the beginning submitted to your Majesty, and laid myself, my life and my honour, at your feet. Then (having obtained your gracious permission to speak freely) I promised to speak for your interest, for the honour of this Parliament, with the freedom befits my place, and the humble submission to your pleasure which becomes me.

“ I clearly asserted your Majesty's undoubted right in the legislative power; that you alone have the negative vote: Your assent turn'd the consultations of your Parliaments, and your assent reduces them into nothing: That this was ever your right inherent to your Crown of Scotland, clearly asserted by this Parliament, and never parted with by any of your royal progenitors, (excepting the late usurpations in the Rebellion): That your royal grandfather and father never parted with it: Though their residence here barr'd us the happiness of their presence, yet they call'd our Parliaments;

they kept them by their Commissioners; and never till now did Commissioner presume so to pass Acts, without their Majesties approbation, unless they have been such as flowed expressly from their instructions. Were it otherwise so plenipotentary, a Commissioner should exercise at his pleasure the greatest and most essential part of kingly power; and then your subjects of Scotland should, of all others, be the most miserable: That your kingdom of England, being blest by your constant presence, and Ireland, even by Poyning's law, are secure from the danger of such a miserable condition. Nor hath your kingdom of Scotland any reason to complain of your Majesty: such hath been your justice and goodness, that no act of yours hath put us into a worse condition; you gave us not up into the arbitrary will of our fellow subjects: But how your Majesty and your Parliament have been used, is worthy of your consideration. Then I mentioned your first Commission to the Earl of Middleton, and your second, whereby he is restricted to what, by the law and custom of that kingdom, belongs to Commissioners, or which others in that charge did or might have done. This, together with his instructions, make up the rule of his proceedings: How he kept these rules I left to your Majesty to judge, and I went on in these words.

“ I shall not now insist on many Acts of general concern past without your Majesty's knowledge, though some of

them were of great importance to you and your people; a thing contrary to the duty and practice of all former Commissioners; contrary to law and right reason, which is the foul of law. I shall not insist on his consenting to the putting the power of a man's life into his hand; to the disposing of publick money; to the empowering himself to name a receiver of the fines, which belong to your Majesty; to the leaving it in his power to put your Officers of State to a test, in things which do import the losing of their places, or the not putting them to it, at his pleasure: All which had becom'd him well, in my opinion, to have declared to be only fit for your Majesty, and too much to be in the hands of any subject. Nor will I insist on an Act toucht by your royal sceptre, which takes from your Majesty the power of pardoning the sons of those forfaulted by this Parliament; yea and declaring your pardon (if you sign any) to be null and void. Some such thing hath been done in former times; but was in the King's presence, and by his direction: And well might this Parliament have concluded, that this had at least your Majesty's approbation. It is far from my thoughts to blame the Parliament; but it is strange your Commissioner should have made it your act, without your knowledge.

“ These things I mentioned by transition, and hastened to the work of the day, by comparing the Act of Fines with

your Instructions, when your Majesty shall think fit to examine it: and insisting mainly upon your Commissioner's carriage in the Act of Billeting, and the consequences of it, which shall appear to have been done not only without precedent, without your Majesty's knowledge, but, as I conceive, expressly contrary to your declared pleasure and Instructions.

“ Here I mentioned your gracious Instructions. As to the Act of Pardon and Oblivion, I repeated your limitations as to the persons finable, (which I need not here transcribe,) and hinted at the limitations of the proportions; and told your Majesty, that when you should be pleased to take the list of the fined persons into your consideration; when you shall examine how and by whom it was managed, I think it will clearly appear, how palpably the Earl of Middleton hath broke your limitations, (besides the underhand dealing of others, for freeing men full as guilty as many of the eight hundred and odd contain'd in that list): This I left to examination, and then came to that which I mainly insisted on, and spake as follows.

“ But this eminent clemency of your Majesty, this truly royal virtue, for which all Europe admires you; this your fatherly care in chastising with so much mercy; this, Sir, suited not with other men's malice, but a greater punishment

must be found: You would only have chastised with gentle stripes; they must be allowed to whip with scorpions: Fines reached only men's money; but a punishment must be invented to rob men of their honour, to lay a lasting stain on them and their posterity. Now, Sir, be pleased to observe, how grossly you and your Parliament have been abused; and for what I shall positively affirm, I do appeal to your royal self, and many of my lords here: What I shall say upon other evidences more than probable shall, I think, be cleared, when your Majesty shall examine the matter to the bottom; which, I humbly conceive, much concerns your honour, and the honour of your Parliament. Be pleased, Sir, to remember, you expressly commanded that the Act of Oblivion should be transmitted to your Majesty, before it past. You again called for it; but it was long e'er it was sent. At last, Sir George Mackenzie of Tarbet was sent up by your Commissioner. After a fortnight's delay he brought in his power to your Majesty; and, by your command, he delivered them to me, with a general letter from your Commissioner referring to him. Next day, your Majesty called such of your Scots Privy Council as were at Hampton-Court; and in Council, you commanded me to give you an account of the papers I had got. Be pleased, Sir, to remember, I did make bold there to tell you, that he had given me first one copy of an Act of Oblivion, and then another different from the former; that one of them behoved to be

false; and at that rate he might bring in more. He would have said something, to have made me believe they were both one, but it proved just nothing; for here there was a most material difference: The one only excepted in the last clause, as to fines; the other excepted from publick trust, and as to fines, such as are expressed in another Act, entitled An Act for Fining and Debarring from Publick Trust. Then he own'd his last copy, and said he would answer for it. I objected, that by the words it appeared, that all who were to be fined were to be incapacitated. Tarbet answered, that the Parliament intended only to incapacitate a small number of the most guilty, not exceeding twelve. I opened to your Majesty how heinous a punishment incapacitating was; a punishment worse than death, and much beyond what you had allowed by your Majesty's most gracious Instructions. Then was again urged the desire of your Parliament: And who could doubt it proceeded from your Parliament, when it was so boldly averred to your Majesty in your Council, by one employed with a letter of credit from your Commissioner. Thus you consented upon that information. And mark, Sir, you did only consent, not command it, as appears by your letter. Now, be graciously pleased to observe, how first you, next your Parliament, and then both you and your Parliament, have been abused in this particular. This paper was never so much as communicated to your Parliament; and never was incapacitating mentioned

in that House, until Sir George Mackenzie's return. A draught of an Act of Oblivion was indeed framed in private by some eminent lawyers, and other members of Parliament; but that was the first draught, not that second which Sir George Mackenzie owned with such impudence: yet this your consent so obtained, reached not their ends who devised it. It was indeed colour enough to have suggested, that it was your pleasure twelve should be incapacitated; but it seems their design reacht others, whose places were their crimes, who could not possibly by malice itself, nor by the author of malice, be brought within the limits prescribed for the smaller punishment of fining: therefore a new way must be invented, and that was Billeting. This is a new way indeed, and an effectual one. By billeting, any man's honour, his life, his posterity, may be destroyed, without the trouble of calling him, hearing his answer, nay, without the trouble of accusing him. Billeting hath the wonderful power to destroy any man, and yet the collective body of that Judicature who use it, shall never be troubled with his name till it come to be executed. This is a stranger engine than white gunpowder, which some fancy; for sure this shoots without any noise at all. But, blessed be God, this dreadful engine was never known, as to punishments, amongst any people, heathen or Christian, who had the blessing to live under Monarchy. Some Republicks use the Billet, or the Ballot, in giving places; but I never so much as read of any thing

like it as to punishment, except the Ostracism among the Athenians, who were governed by that cursed Sovereign Lord the People, and by their oystershell billeting. I read of the banishment of Themistocles, after his two famous victories of Salamis and Thermopylæ: I read also that Aristides was so billeted; a man whose eminent justice is turned into a proverb. Yet billeting was once attempted to have been brought into Scotland. It was, Sir, in the year 1641, when your blessed father's royal prerogative of naming Officers of State, was wrested from him, and subjected to the approbation of Parliament. Then was billeting struggled for, but vigorously opposed by your royal father. And even in that said time, such was the justice and strength of reason with which he opposed it, as it was never heard of in Scotland till now, that billeting, even in punishment, is touched with your royal sceptre by the Earl of Middleton, and so endeavoured to be made a law. Now, Sir, let me humbly beg your patience a little, to open to you, how (as I am informed) this billeting was brought in at this time. It was not first moved in Articles; the most usual place for proposing laws. It was first moved in the Committee of Fines, (as I am told) and by the fittest man to impose on your Parliament this effectual way of it, who had imposed incapacitating itself on your Majesty; and this was Sir George Mackenzie. As soon as moved, it was opposed; and then your Commissioner appeared not for it; but when it was better prepared, it is

moved in the Articles, and again vigorously opposed; but then your Commissioner appearing for it, it was, I think, believed he had good warrant for it, and so it passes. Now, in the last place, I come to the ways of carrying on the names of those who were to be billeted. This was done more in the dark; yet I shall discover what light I have got, but it must be with a gentle hand, for they say I am one of them; and I am apt to believe it, Sir; for to me it is no new thing. Six times I have been excepted; twice for life and estate; twice for my estate; and twice thus. Yet, I bless God, five of the times was during rebellion, and by usurpers, for serving your royal father and yourself; and this last, I hope, shall be found to be done, neither by your Majesty, nor by your Parliament. If by your sacred Majesty, I lay myself at your feet: your breath shall easily destroy the work of your hands, without any such engine as billeting. And sure it is not by your Parliament; for my name was never named by your Parliament, but when they honoured me with an obliging letter, and when they acknowledged your worthy choice of me as Secretary (so they are pleased to call it, and here I have it signed by your Clerk Register as an Act of Parliament); and none can make me believe, that this so just a Parliament would, without accusation or hearing, so severely condemn a poor man, whom they had so much honoured. But I am not worthy your Majesty's trouble. The names inserted in the billets were well known (as I believe)

to the Earl of Middletoun. I am informed the Earl of Newburgh at his table read his list, and desired to make no secret of it, as a Noble Lord here will justify. I shall not now insist on my informations of diligent soliciting, by men of quality, and in whose names they solicited, nor what meetings were kept at Maister's tavern, and elsewhere, for carrying that which was called the right list; for it is time to end this too great trouble. If your Majesty shall think the persons concerned worth so much consideration, you will easily discover every step for compassing this affront put on them in the face of all Europe. And such is the loyalty of the members of Parliament, that when your pleasure shall be made known, no one circumstance will be concealed from you. How your honour, and the honour of your Parliament, is here engaged, I do humbly leave to your royal wisdom.

"This is the substance, and, for the most part, the very words that I spoke; and which, in obedience to your royal command, is here in all humility presented to your sacred Majesty by, Sir, your Majesty's most humble, most obedient, and most faithful subject and servant,

"LAUDERDAILL."

THE EARL OF MIDDLETOUN'S ANSWER.

“ May it please your Majesty,

“ I do, with all gratefulness and humility, acknowledge your Majesty's grace and justice, in letting me have a paper of the Earl of Lauderdale's, relating to a speech he had, February the 5th, in presence of your Majesty, and those of your Privy Council of Scotland here. There be many things in that paper against me, and some things many times repeated; the most of them be mentioned in a transient way (as he says): Yet it being much easier to charge than discharge, to accuse than vindicate, I crave your Majesty's pardon, if my answers be somewhat longer than his charge. I shall follow the same order that the Earl of Lauderdale has done. His paper is divided into six sections. The first of which being only an introduction, I pass it over, as having little material in it as to me, and pass to the second section, which beginneth as follows:

“ I told you, Sir, the occasion of that Council is new and
“ very extraordinary. The good old way hath been, for
“ Kings to consider of Acts prepared, before the royal assent
“ made them laws; but here your Majesty is put to an after-
“ game. Your royal assent is given to some laws without

“ your knowledge, and I doubt it shall appear againſt your
“ declared pleaſure,” &c.

“ Sir, I crave leave to differ from the Earl of Lauderdale’s judgment in this. I conceive the calling of Councils of this nature has been very ordinary; and that Commiſſioners entrusted by his Maſteſty, have, in this very way, given accompliſhments of the diſcharge of their truſt. As for his ſuſumption, which he calls the good old way, &c. If this be underſtood, when your Maſteſty’s royal predeceſſors were preſent with their Parliaments, in Scotland, it is not to be denied; for they not only ſaw the Acts prepared before the royal aſſent made them laws, but even before they came before the Parliament. But, if it be underſtood, when Parliaments were held by Commiſſioners, it is actually impoſſible that any ſuch thing could be done: The Parliaments of Scotland continuing only but eight days, the firſt day of the Parliament’s meeting was taken up in conſtituting the Houſe, and chuſing the Lords for the Articles; then did the Parliament adjourn; the Lords for the Articles went about the drawing up, and preparing ſuch Acts as were to be paſt in that Parliament; that being done, the Parliament had its ſecond and laſt meeting; in which day, all Acts were read, debated, voted, and paſt. This was the old way, and continued ſo till the Rebellion, by which all was overturned; and, amongſt the reſt, that way and form of Parliaments.

Now, I leave it to your Majesty to judge, when or how these Acts could come to the King. First, the Parliament continuing so short a time: Next, besides the shortness of the time, be pleased to consider, that these Acts behov'd to be sent, either before or after the Parliament had seen them. If before the Parliament had seen them, then it could be no free Parliament, except it had been left to the Parliament to debate, alter, or change: And if that had been done, it had frustrated the end in sending the Acts to the King, because the Parliament might have changed and altered them: But that they were sent to the King, after the Parliament had seen them, was impossible; for in one day, as I said before, they were debated, voted, and touch'd with the sceptre royal, by his Majesty's Commissioner. Then the Earl of Lauderdale says, that I have passed Acts without your Majesty's knowledge and pleasure. This is a general: if I meet with it in the particulars wherewith I am charged, I hope I shall be able to answer it; if not, to say I have not done it, is sufficient. As for his apology, both as to the Parliament, and his own concern, I shall say little: The Parliament will, if ever this come before them, give their own sense of it. For the Earl of Lauderdale, reflecting upon me, I shall likewise pass it over; only I might have expected in justice, that as he will allow me no share in the good things done by the Parliament, that I might not have been charged with all the things controverted. I shall say further, that I never

faid any thing, directly or indirectly, that might derogate from the Parliament; neither did I ever arrogate to myself the praise of their work. Now, I come to his third section, which begins as followeth:

“ I clearly asserted your Majesty’s undoubted right in the
“ legislative power; that you alone have the negative vote:
“ Your assent turns the consultations of your Parliaments
“ into laws, your dissent reduces them into nothing,” &c.

“ I know not what inference the Earl of Lauderdale can make from this; for I have made it already appear, how impossible it was to send the Acts to the King before they were past. And this is so clear a truth, that all who know any thing of the Parliaments of Scotland, know it to be so. In my humble opinion, his inference had been much better, to have said, that by virtue of your Majesty’s absolute and sovereign power, your Majesty doth give full and unlimited commissions to such as you trust in that great charge: But yet not so, but they are answerable to follow their instructions and limitations; and by virtue of these commissions your sovereign power is exercised. Then the Earl of Lauderdale argues against the bad consequences of it, if it should be otherwise. To that I shall only say, that this had been more seasonably spoke before my first going for Scotland, to the first sessions of your Majesty’s Parliament; for then your

Majesty was pleased, by your gracious letter to your Parliament, to assure them, that you would maintain the just liberties of your people, as they enjoyed them under your royal predecessors; and did commissionate me your Majesty's servant, as fully as any Commissioner ever was, and to do every thing that ever any Commissioner did, or might have done. Your Majesty's Parliament of Scotland looks upon it as an undoubted privilege of a free kingdom, either to have their Kings personally present at their Parliaments; or in his absence his Commissioner, fully authorized under the Great Seal, to represent his person and authority; and, upon this accompt, all commissions are very absolute; and the Commissioners were only limited and directed by their Instructions, which were ordinarily known to none but his Majesty, and the person that received them. Besides, still as the Acts were past I sent them to your Majesty, and constantly received your Majesty's returns of your gracious acceptance. And further, by your Majesty's second commission, now past under your Great Seal, I have a full approbation of my services done you in the first session of your Majesty's Parliament; and now to be accused upon this general, of passing Acts without sending them first to your Majesty, is to me a new and strange thing. In my humble opinion, the Earl of Lauderdale argueth more against the giving, than the executing of such commissions. Now I come to his fourth section, which begins as followeth:

“ I shall not now insist on many Acts of general concern, “ past without your Majesty’s knowledge, though some of “ them were of great importance to you and your people ; “ a thing contrary to the duty and practice of all former “ Commissioners ; contrary to law and right reason, which is “ the foul of law,” &c.

“ I have met with many such generals, to which, I hope, I have given satisfactory returns. All I shall add to what I have formerly said, is, that never Commissioner had such a charge given him, by one under whose hand he has large approbations for most of his services ; for the first session of Parliament in general, and for most that passed in the second there, four Acts excepted. If the Earl of Lauderdale was of this judgment at that time, in my humble opinion, he ought to have made it known to your Majesty, that I might have received your Majesty’s directions for my proceeding in this way he now proposeth. Next, the Earl of Lauderdale falls upon particular Acts. The first is, my consenting to put the power of a man’s life in my own hand, What Act this is I cannot tell, nor do I remember there was any such thing done. Yet this is a very ordinary thing in inferior judicatories : however, I was here only the consenter, not the doer. The second particular Act is, an Act for disposing of publick Money. To that I answer, there was no new imposition laid upon the kingdom ; but there being

some cefs imposed for carrying on the Engagement in 1648, and upon the hopes thereof, fundry advancements being made for carrying on that service, by persons well affected thereto, after the disappointment of that Engagement; they who usurped the authority, declared all who opposed the Engagement, free from payment of that cefs: And all that is done now, is only the raising of that which was discharged by these usurpers; for all honest men had payed their proportions to the full; and the sums raised, were only employed for repayment of sums lent for promoting of that Engagement. Besides, there was some cefs resting, which was imposed by your Majesty and your Parliament, when you was in Scotland, which was assigned to several who had furnished arms and ammunition; as to Sir John Smith, and others; diverse of which have your Majesty's recommendations to the Committee of Estates, and first session of Parliament, that effectual payment might be made them of their just debts, which in some measure is done by raising these arrearages, without any new imposition. Only, I must confess, there was 12000*l.* raised for your Majesty's Lords of Session; and for that I have your Majesty's Instruction. Notwithstanding of this, I humbly crave liberty to tell your Majesty, that the Parliament believes it to be their undoubted privilege to raise money; and, in some cases, to collect and dispose of it. Now, I may say this Parliament has done no such thing; and if this be a guilt, certainly it is the Par-

liament's guilt, and not mine. The third particular Act I am charged with, is my consenting to the empowering myself to name a receiver of the fines. Truly, Sir, as I did never desire it, I did not at all doubt but the Parliament might have done it. I am sure it is done by inferior judicatories every day, who not only fines, collects fines, but likewise disposes of them. And this is the constant course used by the Lords of your Majesty's Privy Council, in order to all delinquents that come before them. How this is come to be a thing of course I know not: For there be many customary laws in Scotland, that are neither statutory nor written laws, and yet they have the same force in determining causes: And in this likewise I am only the consenter, not the doer. The fourth particular Act is, "the leaving of it in his power to put the Officers of State to a test in things which do import the losing of their places, or the not putting them to it, at his pleasure." I know no such Act. It is true there is an Act concerning the Declaration to be signed by all persons in publick trust; wherein it is expressed how persons that are to be admitted to places of trust are to sign the said Declaration; and it is by the Parliament remitted to me, how persons that are presently in trust may subscribe the same. However, I never moved, nor intended to move in it, without your Majesty's commands. And yet, things of that nature are ordinarily remitted to the Lords of your Majesty's Privy Council, Sheriffs, Magistrates of Burghs, and

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sometimes to persons commiffionate for that effect. I believe this is the Act which the Earl of Lauderdale was pleased to call, before your Majesty and the Lords of your Privy Council, an Act for putting honest men out of their places, even Officers of State: And I am very fure that the Act is not arbitrary, that I may put them to it, or not put them to it, at my pleasure, which he is pleased to say. I hope the Act is such, that your Majesty will be pleased with it, and all honest men. The fifth particular Act is, an Act which, he affirms, takes from your Majesty the power of pardoning the sons of those forfaulted by this Parliament; yea, and declaring your pardon (if you sign any) to be null and void. Then he tells us, that such things has been done in former times, but it was when Kings were present, and by their direction; and that the Parliament might have concluded it to be so now, &c. In the first place, I know no such Act as this described by the Earl of Lauderdale. There is an Act anent the children and posterity of traitors; and that extends not to all, but to two sorts of traitors, viz. those that design and attempt violence against his Majesty's person; and to such as rise in arms and join in open rebellion against his Majesty's person, authority, and government, or any having his Majesty's commiffion. I am very hopeful, when your Majesty has considered the reasons, grounds, and other circumstances, which occasioned the passing of this Act, it will appear more reasonable than the Earl of

Lauderdale would have it to be. In the first place, it extends not only to persons forfeited in this Parliament, and to their children, but likewise to all who shall happen to be so desperate hereafter, to attempt the like things, and to their posterity; for none knows what his posterity may be. And, in my humble opinion, the Parliament did, in this Act, express as much affection and duty to your Majesty, as in any other Act done by them. I shall begin with the reasons that occasioned the passing of this Act. The first was from the Common and Civil Law, wherein severe statutes were made by the two most excellent Christian Emperors, Arcadius and Honorius; conform to which it was alledged, that it was the constant practice of Scotland; and that *in anno* 1540, in King James the 5th's time, it was statute that the children of traitors should suffer for the father's crime, and that the King may judge in such a case according to the Common Law, albeit there were no special statute made thereanent. That this has been the constant practice of the Kings of Scotland, appears by the forfeiture of those who killed the two Regents, James the 6th, Parl. 5th; in the forfeiture of the Earl of Gowrie, 1600; of Bothwell, 1592; of Maxwell, 1609; Restalrig, 1609; yea, the children of all these persons were, by distinct Acts, declared incapable of favour. And in the very words of this Act, it was prest upon good reason, that if ever any such act or practice was convenient, it was now most necessary, when extraordinary

treason was not only ordinarily perpetrated, but avowedly maintained as duty. And when so much bad example was given to posterity, it was but proportionable that a punishment, as extensive as the crime, should be denounced, to terrify ill men from the fury of such atrocious crimes. Besides, it was prest, that there being a principle received by this generation, of a Bond or Covenant, by which they believe themselves to be bound, and their posterity for ever, with an indispensable oath to take up arms against authority, when, to their apprehension, either Religion or Liberty is in danger; and so in justice a punishment, reaching as far as the execrable obligations, was judged necessary. But the force of all lieth against the clause of nullity, as if it were a limitation to your Majesty's prerogative royal. I have already spoken of precedents of this nature, your royal predecessors being present. I shall now further add, that this Act is rather an extension, than limitation to your prerogative royal. For subjects are so naturally tied by their private deeds and obligations, that albeit general laws hold forth advantages to them, yet their own private deeds are stronger upon them, than any benefit they can claim from a law. Nor can a law so provide, but a subject may, by private pactions, prejudge himself of the benefit of the law. But the King, who is above, and so exempted from the coercive bonds of law, is in this and the like clauses, above and exempted from the coercive obligation of private deeds.

The King of Scotland cannot lawfully alienate the patrimony of the Crown; not that he wants dominion or power over his goods, but because his power is so transcendent, that he sets his property above the possibility of legal alienation. And this has ever been practised by your Majesty's royal predecessors, Kings of Scotland. King James 2d, Parl. 11, Cap. 41, statutes, that albeit our Sovereign who now is, or any of his successors, shall alienize or dispoise lands or castles annexed to the Crown, that disposition or alienation shall be of no avail. King James 3d, Parl. 9, Cap. 71, and Parl. 14, Cap. 112, statutes, that any dispositions to be made by him or any of his successors, of the earldoms of Ross or March, shall be unlawful, and of no effect to any receiver, except the King's son. King James the 4th, Parl. 1st, Cap. 5th, and Parl. 2d, Cap. 10th, annuls all his father's and his own deeds and dispositions. King James the 5th, Parl. 6, Cap. 84, statutes, that if it shall happen the King or his successors to alienate lands, castles, patronages, &c. annexed in that Act, such dispositions shall be of no avail; but notwithstanding thereof, it shall be lawful to the same King, or his successors, to possess these lands without any sentence or process of law. King James the 6th, Parl. 15, Cap. 234, and 235: In both these Acts, dispositions made by the King are null of the law, by way of action or exception; and from these Acts floweth that which is reputed the great and royal prerogative, the revocation of

our Kings, of all deeds done by their predecessors in prejudice of the Crown. This Act of nullity hindereth not your Majesty from giving away the lands of forfeited persons, but only puts your Majesty in a capacity to possess the same again if you please. If not, your successors may do it; for in all sentences of forfeiture, the lands of the forfeited persons are annexed to the Crown, to remain for ever. Your Majesty may, by your royal prerogative, restore the son of the forfeited person to the enjoyment of his father's lands; but, without an Act of dissolution by your Parliament, your Majesty, or your successors, may repossess yourself with these lands at pleasure. So the nullity in this Act serves for two excellent ends; for, if your Majesty restore the children of forfeited persons, it ties them to good behaviour, it being still in your Majesty's power to put them out of their possessions. And the second is to terrify desperate persons from attempting to commit such horrid crimes. By the many precedents and Acts cited by me in defence of this Act, I did believe it to be an Act of course. Yet so tender was I of your Majesty's prerogative royal, that I did, in face of Parliament, desire the Clerk of your Majesty's Register, neither to print it nor publish it, till your Majesty's pleasure should be known thereanent: So it is still at your Majesty's disposal. Now, being come to the fifth section, which begins as follows:

“ These things I mentioned by tranſition, and haſtened to
“ the work of the day,” &c.

Tho’ theſe things have been lightly paſt away by the Earl
of Lauderdale, yet they have been heavy enough upon me;
and I have had work enough, before he comes to that which
he calls the work of the day. He falls again fiercely upon
my having gone contrary to your Maſteſty’s Inſtructions, and
declared pleaſure. And further, that I had broken your Ma-
jeſty’s limitations, in order to the perſons fined; beſides the
underhand dealing of others, for freeing men as fully guilty
as many of the eight hundred and odd continued in the liſt
of fines. To the firſt, that I have gone againſt your Ma-
jeſty’s declared pleaſure, and Inſtructions: This I underſtood
not; nor can I conceive wherein the fault lieth. If he
meaneth by the Act of Billeting, I am ſure there is not any
Inſtruction againſt it; nor was there ever any diſcourſe of
it; nor was it ever deſigned by me. As for my carriage in
it, farther than permitting it to be made uſe of at that time,
in order to the paſſing of another Act, concerning perſons to
be excepted from publick truſt, I appeal to the Parliament;
for neither in that, nor in any other thing elſe, did I ever
ſecure any member of Parliament; neither did I ever cabal
with any party or perſons for carrying on of buſineſs; and
it may be, this was the greateſt grievance was aſſerted againſt
me, ſo that ſome of my friends did very often tell me of it.

But I told them, that the open and plain way was both the best and truest. Never Parliament had less of this kind of dealing than this had. Parties and factions have been much kept up in Scotland by that way, chiefly in the time of the late Rebellion, which made me both disown and shun it. Then I am charged as having palpably broken my limitations. I did openly declare and read your Majesty's limitations to your Parliament; upon which a Committee was chosen, of persons well known in the several quarters of the kingdom, with whom were joined your Ministers of State; and an oath of secrecy and fidelity was exhibited to them; and so they proceeded to the discharge of that trust; and the only rule and square of their proceedings was your Majesty's limitations. That this can rationally be objected against me, that persons nocent escaped and innocent fined, is very severe. Neither was it in my power, nor in the power of any one man, to know all the persons of the kingdom. I did my duty, in shewing your Majesty's pleasure, and giving the limitations in writing. Besides, after the list was completed, and brought in by the Committee to the House, I did declare in face of Parliament, that if any person innocent fell not within the compass of your Majesty's limitations, and suffered through ignorance, or otherwise, he might have a free and full hearing at the next Sessions of Parliament, without incurring any hazard by the certification contained in the Act of Fines. That guilty persons

were made free, by underhand dealing, I know not. The best way, in my humble opinion, is that your Majesty would be pleased to appoint some persons to try the truth of it. Now the Earl of Lauderdale comes to his last section, which begins as followeth :

“ But this eminent clemency of your Majesty, this truly
“ royal virtue, for which all Europe admires you ; this your
“ fatherly care in chastising with so much mercy ; this, Sir,
“ suited not with other men’s malice, so a greater punishment
“ must be found : You would only have chastised with
“ gentle stripes ; they must be allowed to whip with scor-
“ pions : Fines only reached men’s money ; but a punish-
“ ment must be found to rob men of their honour, to lay
“ a lasting stain on them and their posterity.” &c.

“ To this I crave your Majesty’s leave to say, that not
only I, but all your other subjects of Scotland, have more
than reason to bless God for your clemency. For there be
very few that were of age, during the time of the late Re-
bellion, but have more or less tasted of it ; I am sure I have,
in a very large measure. But to desire some mark of your
Majesty’s displeasure, to be put upon men that have been ill,
continue ill, and own their iniquity to this day, deserveth
not so hard characters. Your Majesty was pleased to grant
the desire, for excepting persons from trust, in presence of

your Scots Council; so it might have been expected, upon that accompt, that the design in general might have been used with more civility. If I had but time to tell what most of those men have done, by murdering, sequestrating, fining, forfaulting and imprisoning many of your best subjects; besides their invading and usurping the prerogatives of the Crown; they still owning their horrid and destructive principles to this day; it would be thought strange any man could be found to speak for them. Whatever become, I pray God keep your Majesty from ever trusting impenitent rebels. Then the Earl of Lauderdale is pleased to give your Majesty an account of Sir George Mackenzie's coming to Hampton-Court, and of his delay in giving in his papers, and of his giving in two several Acts of Indemnity: and farther desires your Majesty to mark, that your letter was only a consent, not a command, for excepting persons from publick trust. And, upon the whole, the Earl of Lauderdale concludes, that both your Majesty and your Parliament have been abused. Further he asserts, that neither the Act of Indemnity, nor that clause for excepting persons from publick trust, was ever seen, or known to the Parliament, before Sir George Mackenzie's return to Scotland. I do not deny but I sent Sir George Mackenzie to your Majesty, with a letter of trust, and by him sent the Act of Indemnity; and further instructed him, that it was the Parliament's desire, (as such he likewise very well knew,) that

some persons might be excepted from publick trust. And what I said was upon very good grounds; for the most part of all the members of Parliament had very often spoke to me about it; and indeed they were in a very high discontent, to see persons so eminently guilty, still owning their cause, constantly opposing all the good Acts that were past in Parliament: So, upon the constant importunity of honest and faithful men to your Majesty's service in the Parliament, and upon the consideration, that the late Rebellion was principally fomented, carried on, and kept up by the unfaithfulness of such persons, as were entrusted by his late Majesty, of ever glorious memory, in the administration of his government, I thought it my duty to signify so much to your Majesty. That the Parliament should have seen the Act of Indemnity before it was sent to your Majesty, was neither necessary nor congruous; it being an Act of Grace from your Majesty, in which many of the Parliament were concerned, which your Majesty might have extended or limited at your pleasure. This was the practice of the late times during the Rebellion. The Parliament 1641, framed their own Act of Indemnity; and not only so, but likewise imposed upon his late Majesty, of glorious memory, the following Declaration, which was published and printed; and so, before the Act Recisory was past in the first session of this your Majesty's Parliament, continued to have the force of a law.

“ I taking in good part the respect and thankfulness of this
“ Parliament, in remitting to me these who were cited as
“ incendiaries, and others according to their declarations, do
“ declare, that I will not employ any of these persons, in
“ Offices or Places of Court or State, without consent of Par-
“ liament, nor grant them access to my person, whereby they
“ may interrupt or disturb the firm peace which is now so
“ happily concluded.” The persons excepted by this Decla-
ration were, John Earl of Traquair, Thesaurer and late
Commissioner; James Marquess of Montrose; John Bishop
of Ross; Archibald Lord Napier; Sir Robert Spotswood,
President of the Session; Sir John Hay, Lord Register; Sir
George Stirling, Knight; Sir Archibald Steward, Knight;
Doctor Balcanquel, Dean of Durham.

“ Upon this very attempt it was, that your Majesty’s Act
of Grace and Indemnity was never seen by the Parliament,
till your Majesty had first seen the draught and perused it.
I therefore did entrust Sir George Mackenzie with two
draughts of an Act of Indemnity, which differed in nothing,
save in that concerning persons to be excepted; and he was
to have presented either the one or the other, according as
your Majesty should relish or not relish the desire for ex-
cepting persons from publick trust. And for that which the
Earl of Lauderdale is pleased to say, that your Majesty did
only consent, and not command, as appears by your letter,

I shall give no answer; only that I made no other use of your Majesty's letter, but in presenting it to the Parliament, which was thrice read over, and well understood. And because hard constructions are put upon this, as if at that time I had designed billeting, and intended to prejudge the Earl of Lauderdale; I take God to be my witness, that billeting had never entered my thoughts, and that I had not the least thing of design against the Earl of Lauderdale. Then the Earl of Lauderdale falls fiercely upon billeting, and the ways of carrying it on; to which I will answer nothing, as knowing nothing of them: for, as I said formerly, I did nothing, directly nor indirectly, concerning it, but by consenting to the doing of it. He is further pleased to say, that the names which were in the billets were well known to me; and that he was informed that my Lord Newburgh did read his list, and desired to make no secret of it at my table. This, I hope, my Lord Newburgh has cleared himself of, before your Majesty and your Council. I am sure he never read any list to me, neither did he communicate any list with me. And I do ingenuously profess to your Majesty, that I knew not the names contained in the billets, being in all fifty-four persons named; which is well known to those that collated the billets, where I was present; till which time, I knew not who were excepted, or who not excepted. Now I shall humbly crave your Majesty's liberty to give you a full account of the truth of the business. Your Ma-

jeſty having entrufed your Parliament with the nomination of theſe perſons who were to be excepted from publick truſt, the Parliament reſolved to diſcharge this truſt according to their conſciences, in a full compliance with your Majeſty's gracious inclination, to have all animofities removed among your ſubjects. Upon this accompt it was, that ſince a publick nomination of perſons would certainly have occaſioned great prejudices betwixt the perſons nominating, and the perſons nominated, it was conceived fitting in this extraordinary occaſion, that the nomination ſhould be by billets, wherein every man had his freedom, without fear or hazard, to vote according to his conſcience, without prejudice from the perſons nominated. It being firſt expreſſly provided in an Act, publickly and unanimouſly aſſented to in Parliament, that every one ſhould give in his billet according to his conſcience; and that ſome few perſons ſhould be appointed to collate the billets, that the perſons excepted from publick truſt might be found out; the perſons appointed for this ſervice had an oath given them to be faithful, and ſecret in open Parliament. The twelve excepted perſons being known to the perſons entrufed, it was ordered by the Houſe, that all the billets ſhould be burnt in their preſence: That the Clerk of Register ſhould infer the names in the Act, named An Act concerning Perſons excepted from Publick Truſt; and the Lord Chancellor, as Preſident of the Parliament, was appointed to ſign it; both of them being

under obligation of secrecy. Thereafter it was delivered to me, to be seal'd and sent to your Majesty, to be made use of according to your pleasure; and this was the true way of carrying on of that business. Of any other indirect ways I know not; and by this way your Majesty may make use of your negative vote, by reducing this law to nothing, there being nothing of it left upon record. Now be pleased, Sir, to mark, the force of all the Earl of Lauderdale's arguments against me, lieth in that position of his, that never Commissioner past Acts in Parliament, without sending them first to the King: The which I absolutely deny; and if your Majesty rest not satisfied with what I have said against it, it being a matter of fact, your Majesty may easily learn the truth of it, from the Lords of your Majesty's Privy Council in Scotland, or the Lords of your Session.

" May it please your Majesty,

" Having with great ingenuity made these returns to the Earl of Lauderdale's paper, I humbly lay them, with my life and honour, at your feet, and do desire to live no longer than I have the esteem of being, Sir, your Majesty's most faithful, most humble, and most obedient subject, and servant."

- Whilst these papers were interchanging, his Majesty was induc'd by Lauderdale to fend down a letter to the Council,
- Jan. 23. the 23d January 1663, discharging the payment of the first moiety of the fines, by virtue of his Majesty's prerogative royal; and this Lauderdale did, both to insinuate himself with the people, and to lessen the gain that Middletoun and his friends propos'd to themselves by the fines. Middletoun, looking upon this as a clear proof of the lessening of his power, interpos'd with Chancellor Hyde; and he did make a report to Middletoun, assuring him that his Majesty would supersede for sometime the granting of that discharge:
- Feb. 7. Whereupon Middletoun wrote a letter to the Chancellor, desiring the proclamation for discharging that moiety of the fines might be continued; and the Chancellor having call'd
- Feb. 13. the Council, this letter from Middletoun was read; and though it was debated that a warrant under the King's hand could not be countermanded but by another express warrant, yet it being answer'd, that a letter under the Commissioner's hand was a sufficient warrant for continuing a proclamation, till the King should be acquainted, it was carry'd by a vote, that the proclamation should be continued, but that Middletoun's letter should be registrate in the Council books. Upon news of this letter, Lauderdale run in great haste to the King, shewing him that now Middletoun, and not he, was King; for he could recal his Majesty's express warrant by his own private warrant: And thereupon Middletoun being call'd,

defended himself by the Chancellor's report to him of his Majesty's pleasure; which answer satisfied not the King, but hastened Middletoun's ruin. For after the King had commanded the Council, by a new letter, dated 10th March March 10. thereafter, to issue out the proclamation, he recall'd Middletoun's Commission, and declar'd his place of General and Captain of the Castle of Edinburgh void, and bestowed the Captain of the Castle's place upon the Earl of Lauderdale.

The great instruments whom Lauderdale had employ'd in this revolution, were the Earls Marishall and Rothes. Marishall having been Middletoun's great minion, was persuaded to shew the King, how Middletoun miscarried in his private conduct, and to rally all his friends and actions. But Rothes, for whom his Majesty had much personal affection, had greater influence; and in recompense of his pains, Crawford was persuaded to quit the Thesaurer's staff in his favour, because himself was not able to keep it, since he could not take the Declaration. And thus the fines, which were impos'd by Middletoun to enrich his friends, prov'd his ruin; and the Declaration, which was design'd to make him Thesaurer, by outing of Crawford, prov'd an occasion to gain one to be his enemy.

Rothes, the more to insinuate himself in his Majesty's favour, and to mix himself in the royal family, by a near

alliance, did propose a match betwixt his niece the Duchess of Buccleuch, and James, natural son to the King; which produc'd the desir'd effect; for this gave him occasion to converse much with the King, and his conversation warm'd the King into new degrees of friendship for him. Nor did the Duchess's mother, Rothes' sister, contribute a little towards the promoting of this kindness, being a person of much wit and subtilty: and to persuade the King yet more, that all Middletoun's procedures were illegal, Lauderdale caus'd call up his friend Sir John Gilmour, President of the Session, upon pretence of consulting the contract of marriage; who, being warm'd with a kind collation, did complain to his Majesty with tears, of Middletoun's rash and illegal actions; which had the greater impression upon his Majesty, that he was figur'd to the King as a person who had been an eminent royalist and sufferer, and that he wept for joy when he spoke to his Majesty.

May 29.

His Majesty now, after many entreaties, gave a new Commission to Rothes, to be Commissioner for the third session of Parliament: For Lauderdale had assur'd the King, that the billeting was contrary to the inclinations of the Parliament; and his Majesty would find so, if he would employ any third person to be Commissioner: nor would himself take the Commission, since he was to be tried by the Parliament, and was to crave from them redress of the wrong he

suffer'd in being billeted, and consequently could not be both judge and accuser.

At Rothes' entry into Scotland, great multitudes did meet him upon the Border; for all the shire of Fife did, upon the accompt of inclination, and all Middletoun's enemies upon the accompt of interest, appear there. Such likewise as expected advantage by the change, or who fear'd prejudice by Middletoun's fall, did go an equal length; [*love and fear making, in morality, equal motions, as in nature, the contrary motions of a pendulum does.*]

The Chancellor, who though he lov'd Rothes, yet hated Lauderdale, was, in this conjuncture, much troubled how to behave; and therefore, to satisfy formality, he went to Edgebuckling-brae, attended by all his friends, and with him went what remained of Middletoun's shipwreck; amongst whom went Tarbet, who thought it his duty not to omit to wait upon Rothes, his old friend, notwithstanding of the hatred he bore to Lauderdale, his greatest enemy.

This change of Court was so great a surprisal, and being the first, made such deep impressions upon us, who were unacquainted with such alterations, that it confounded Middletoun's adherents; it distracted with joy the dependers of the two new favourites; and it astonisht such as were indifferent:

So that albeit the Chancellor did call together Montrose, Annandale, Dumfries, and others who were enemies to Lauderdale, and strove to convince them that it was their interest to adhere to their former principles; nor could they expect but this Parliament, who had been for the greatest part Middleton's own creatures, would assise them, in maintenance especially of their own actions and authority; yet they were under such a deep consternation, that they refus'd to concur with him, pretending that his Majesty was so deeply displeas'd, and that Lauderdale had so uncontrollable an interest with him; that in opposing him, they would rather complete their own ruin, than preserve Middleton,

June 15. Immediately after the Commissioner's arrival at the Abbey, a Council was that same night (viz. the 15th June 1663,) call'd; wherein, after Rothes had produc'd his patent to be Commissioner, he in the next place produc'd a letter, making St. Andrews, Glasgow, and Hatton, Councillors; and the reason why these churchmen were then advanc'd, was not out of any kindness that Lauderdale had for them, but to let the Episcopal party see, that though they had been inform'd that he would ruin them, with Middleton their protector, yet they had been led in an error, and were to expect from him greater shares of favour, if they comply'd with his interest. Rothes likewise had the chief hand in St. Andrews' promotion; for St. Andrews' mother having

been a Leslie, and Rothes being in one shire with St. Andrews, thought it his interest thus to oblige him.

That same night also, the Commissioner did, as the first act of his administration, subscribe a warrant for liberating the Lord Lorn out of the Castle, without producing any warrant from the King; for he had that in a private instruction,

The next day, Lauderdale went to visit the Chancellor; and after the ordinary compliments were over, he told him that he was sorry for any mistakes that had been amongst them; he hoped that both would remember, how long they had been engaged together in the Hamiltoun interest; and that now, he was commanded by the King his master, to offer and renew the old friendship: to which the Chancellor, who was a very generous person, and knew how the other jilted with him, returned no answer, but waved the discourse; whereupon Lauderdale took occasion to acquaint his Majesty of the Chancellor's refusing his Majesty's offer, and justified himself thereafter by this, in all his unkindness to the Chancellor.

Immediately after this session of Parliament was established, June 23. Lauderdale produced his Majesty's letter, declaring his dislike of the procedure used against him and others, in the

Billeting; and in obedience to the letter, a Committee was appointed to examine witnesses concerning the procedure us'd in it, who were not fworn; and amongst others Tarbet was cited; and because he was the chief instrument in that affair, I have here set down his declaration.

“ I do declare, that the first time I ever heard of the Billeting those who were to be excepted from publick trust, was thus: I came in accidentally to a room in the Abbey, where were several persons, particularly the Duke of Richmond, the Earl of Newburgh, Sir James Middletoun, Sir John Urchart, Sir John Strachan, and several others, with two or three servants; and I found them discoursing of excepting persons from publick trust; and the Duke asking of me, what order should be observ'd by the Parliament in that vote, I told, the same that we did in choosing the Lords of the Articles; the clerk should mark what names had maniest votes, and that every member would write his twelve in a paper, and read them out of it. But, says the Duke, we have been here speaking of this way; that every one should give in his twelve in a paper to the Clerk of Register, without reading them out; and that he should in face of Parliament read them all, and mark who had maniest votes; for by this means, said he, every one will give such names as he thinks fit, without fear or hazard; which perhaps they will not do, if they read out the names themselves. Upon this,

some discourse past, but without any conclusion, or any secrecy spoken of; and this was 10 or 12 days before it was spoken of in the Committee of Parliament. The next time I heard of it, I think, was the next day thereafter; when the Commissioner told me, some had spoke to him of excepting the persons by billets given in silently; which I found he was altogether against, and said he would not admit it: and thereafter I did not hear of it, till one night very late, I think the night before that overture was proposed in the Committee, I was sent for to the Abbey, and came to the Duke's chamber, where he told me that severals had been speaking to the Commissioner for that way of billeting; and that they had at least obtained his leave to propose it to the Committee. Thereafter the proposition was brought in to that Committee appointed for Fines, where all the members were under oath of secrecy; so I dare not relate any thing that past there; but some of your Lordships were members of that court, and do no doubt remember what past. But since I hear some have said that I proposed it, I do confidently deny it; and I do humbly entreat that this may be examined; and I humbly propose that the Chancellor, to whom all speech was directed, and the Clerk of Register, whose office puts him to special attention, may be examined, if I did propose it or not. Twice, I think, it was, before the Committee at last allow'd it, and appointed it to be brought in to the Articles. Thereafter, I do not doubt

but severals employed themselves in soliciting the members of Parliament, in order to persons to be excepted; and I was invited by the Duke of Richmond to dine with him one day at Mortoun's, where after dinner, proposing that we might resolve unanimously in the excepting of persons, I crav'd his Grace and the rest pardon, that I found I could not meddle in that; since my employment differenced me and them, in respect of my late attendance upon his Majesty. Whereupon I went away immediately, neither speaking nor doing any thing in order to that; which motive likewise kept me from consulting of any, or offering advice in that affair: and if it had been so, it is too probable I had been as active as any, as the humour then run: but because of that, I never meddled in it, nor did I write my own billet, till I came into the house for giving in our billets; where, at the desire of a gentleman that sat by me, I shew him my billet, he having first shew'd his to me; and except that, I never shew my billet, nor declared my opinion in order to persons to any.

“ Now, my Lord, I do expect, as in all my steps in this matter, to meet here also with some addition of misfortune; and that thus the beginning and carrying on of this was of so little contrivance, and indeed so foolish in its method, that I doubt I shall be believed in this account. But that inconvenience must not be my director: I am sworn, and upon

the hazard of my soul declare it to be truth; so I humbly refer it to a charitable consideration."

I have also set down the summary of the other depositions. It is deponed by two, that before any mention was made at the Subcommittee of Fines, it was moved by the Duke of Lennox, in the Abbey, that the way of incapacitating should be by billet, or giving in the names in paper to the Clerk Register; where each person might give in the names without fear or hazard: that this was proposed in the presence of diverse persons. Another depones further, that at another time, the Duke of Lennox, in his own chamber, in presence of the Earl of Newburgh, told him that several persons had spoke to the then Commissioner anent the way of billeting, and had got leave to propone it in the Committee.

It is deponed by three, that after billeting was resolved, the Duke of Lennox gave to several persons billets, wherein the names of Crawford, Lauderdale, and Sir Robert Murray, were contained.

Another depones, that in the Duke of Lennox chamber, in presence of the Earl of Middletoun, he saw in the hands of the Duke and Earl of Newburgh, about 20 billets; and that he received one, containing the names of Crawford,

Lauderdale, and others; and that the Duke dashed out Tweddale's name.

Another depones, that the night before the billeting, he heard the Earl of Newburgh, in the Duke's lodging, before the Earl of Middletoun, read out the names of Crawford, Lauderdale, and others, and said it was without any obligation of secrecy.

One depones, that before the Duke of Lennox or Newburgh came to Scotland, the Earl of Middletoun told him, there was a warrant come from his Majesty for incapacitating 12 persons; and that, having read a part of a letter from Newburgh, but not the name of any person in it, he asked what he would think if the Earl of Lauderdale, who writ the letter, should be one of the number: To which he answered, "God forbid it should ever enter into your good mind." The Earl of Middletoun reply'd, "It shall not be my mind; but what if the Parliament do it?" The deponent replied, "It will be thought your deed; and ye may obstruct it, though some of the Parliament intend it." And that after this discourse Middletoun said, "It should not be; but if Lauderdale were in my place, I believe he would do it to me."

Another depones, that eight days before billeting, it was resolved, that Lauderdale should be one of the excepted persons; but the Earl of Middleton said to him, it could not be; for he could not be answerable to the King, that any Officers of State should be so much as named publickly, in order to incapacity.

It is deponed by one, that the Duke of Lennox and Earl of Newburgh said, it was the King's pleasure that 12 should be excepted from trust; and that he did see Newburgh's billet, wherein were the names of Crawford, Lauderdale, and Sir Robert Murray.

Another depones, that in the Articles, the Duke of Lennox gave him a billet, wherein Crawford and Lauderdale's names were; and told him, it would be acceptable to the King, that Crawford, Lauderdale, and Sir Robert Murray, should be excepted.

Another depones, that he did see Sir George Mackenzie's billet, wherein Lauderdale's name was; and he told him, that it was the King's pleasure 12 should be incapacitate; and that it were in vain to billet, if they were not billeted; and that it would be acceptable to his Majesty.

This fummary being read in Parliament, Tarbet fpoke thus in his own defence. “ I am not only forry for my misfortune, in being employed to negotiate an affair, the result whereof hath offended his Majesty, but I likewise confefs, that my age, unacquaintednefs, and unfitness every way for acting in fo great affairs, could not but produce both escapes and errors in my actions and difcourfes; and in fo far as what is in his Majesty’s royal letter doth concern me, either in reproof or cenfure, I do moft humbly acquiefce under it; nor would I have adventured on a vindication, had not his Majesty graciously appointed inquiry, which imports an allowance of defence; and in order thereto, I offer thir things to confideration. But before I build the defence, I fhall crave leave to lay firft two pofitions for a bafe, which all the rational world have concluded unmoveable truths. One is, that when words are capable of various interpretations, the circumftances give reftriction to their expofition; for if by time, place, perfon, and coherence, one fenfe be rendered morally impoffible, then, by moral neceffity, they muft be underftood in that other fenfe whereof they are capable. The other pofition is, that whatever envoys or deputies fay in meffage, their words are both fpoke and underftood *in perfonam mandantis; et quamvis loquitur per fe, non tamen a fe*: for fo law and lawyers difference him from a procurator. They fay further, that *est quasi epistola, et*

nunquam obligatur; solummodo ejus superior tenetur in syndicatu.

“ From the first I infer, that albeit what I said or proposed to his Majesty, as the desire or mind of the Parliament; when this is nakedly spoke, it may import the desire of a Parliament by their publick vote, or their mind and sense made known by private conference, or such other ways as a Commissioner or Officer of State ought to take, for trying the temper of a Parliament, thereby the better to know how to manage their trust: yet when it is bound by these circumstances, that the proposition was not for a thing already past; for then I had presented it under the Chancellor or Clerk of Register's hand, as I did, at that time, all that was then past in that session of Parliament; nor as a matter voted by the Parliament; for that had imply'd a contradiction, since the thing desired was, that his Majesty should allow it to be voted; and spoke by me the Commissioner's envoy, it doth evidently exclude the first sense of a publick desire; and therefore I humbly think it was necessarily understood in the other, of a desire such as a Commissioner, and none but he and the Council, might know and inform his Majesty thereof; and since in law, *regulariter creditur nuntio deponenti de officio*, I do declare I understood the words so, and spoke them in that sense: therefore I did not abuse the Parliament, since it was not for me to know or search into this

the Commissioner's desire. I might presume, and by presumption it appears, the Parliament did desire it, since unanimously they voted to it; and so at least did not think it unfit, else their oath of Parliament should have withdrawn their consent. This for the employment.

“The next is, for the person employed: and my defence I found on the second position. I was a messenger, sent by the King's Commissioner by a writ under the great seal; I was commanded to obey him; in obedience to him, I had a warrant for me, so I dared not disobey; obedience was my duty, for I obeyed the King's Majesty, in taking this employment of a messenger; for in law, *qui jubet per alium, jubet per se*: now none will contravert but that a messenger's duty is to deliver his message faithfully, to represent what my superior commanded me; but to represent if the advice or desire was good or bad, it was not my duty; to debate that, was the proper consideration of him who sent me, and of him to whom I was sent. Nay further, had I mixed my own judgment or knowledge with the trust, I had been indeed criminal; had I offered my opinion in contradiction to my command, I had been untrue; had I refused to accept employment, till my superior had convinced me of the truth or fitness of the matter, I had been disobedient and indiscreet. Did obedience depend on the convictions of the judgment of the obeyer, authority were at a pe-

riod. There could be no secret: every envoy behov'd to have as much trust and knowledge as his superior. If the Commissioner did more, or contrary to his trust, that was neither my fault, nor my trust: his employment, by its nature, put that above my doubts: when the King's Majesty did trust a kingdom to him, it was my duty to cast myself and my trust on his command, and to represent his words, to whose care more than that was committed by my King. This implies an instance against what, without good reason, may be urged by some, that I was a member of Parliament, and so knew what the Parliament did. I answer, I was not a member of Parliament, in that employment; I had no other capacity, in that affair, but as the Commissioner's messenger; my charge was to carry his advice, his discourse, to the King; my words were his, proffered by him, at a distance, as by a letter or so; and had I attempted ought, under any other consideration of myself, then as such, I had been both unjust and foolish. The proof of this defence is not only notour, but fully asserted for me in his Majesty's royal letter; where he says I was sent by his Commissioner, and had credit from him: so whatever abuse hath been impos'd upon his Majesty, or done to his Parliament, is neither by me, nor of me.

“ And for a subsidiary defence: Since the Parliament is so dear to his Majesty, for their many good acts and services,

and that I have the honour not only to be a member of it, but not the last in testifying my zeal and affection to my Prince's service; and since, in all these good services, I will not say *pars magna*, (that were exorbitant vanity,) but *pars saltem*; for wherein I needed not attest the Parliament; they have prevented my desire, and in a publick letter testified it to his Majesty already; so I humbly hope one fault shall be covered with these endeavours. For albeit good and ill are not to be confounded, yet with a Prince, whose royal clemency hath made him famous both over and above all the world, I hope that grace, whereof many perverse enemies have shared abundantly, shall not be grudged to an erring, penitent, but loyal servant. My actions cannot but have faults; but that I committed any, which law can interpret either of malice or intention, I positively deny: but whatever become of me, I resolve to follow and practise my principle; which is to obey his Majesty's sacred commands, to submit to his will, and acquiesce under his censure; and I pray God grant him a long and happy reign."

I have also, for clearing the defence, set down here these articles of the Instructions given to Tarbet by Middletoun.

3d Instr. "You shall represent to his Majesty, how much disaffected persons are encourag'd, and their party encreas'd in the country, by the favours which his Majesty bestows on people of

these principles; and how prejudicial that is, by discouraging honest and loyal subjects; especially how much all honest men are dissatisfied, and rogues insolently lifted up, by remissions past to, &c.—You shall represent the ill deeds of these persons, their undeservings of favour, and inconsiderableness as to good or ill service; and what a prejudice the noise of so ample a remission to such persons, and during the fitting of the Parliament, hath occasioned to the King's affairs: You shall therefore earnestly desire, that by a letter or instruction to his Commissioner, it may be recall'd; and so to satisfy the Parliament, by leaving them to their censure, as others are.

“ You shall represent to his Majesty, that there be some persons who were most active in the rebellions against his father and himself, still continuing in their bad principles; and are hopeful, the Act of Indemnity being once past, to screw themselves into publick trust, and to overturn what was done these two last years in this kingdom, and to ruin those who carried on the same. It is therefore much desired by the Parliament, and it is the sense of honest men, that nothing can be of more use to his Majesty's interest, than that such should be excepted from publick trust: You shall therefore urge, that this exception in the Act of Indemnity, be allowed by his Majesty; and that he warrant his Commissioner and Parliament, either by a letter or instruction

4th Instr.

under his royal hand, to except from publick trust, such as they know to have been most active and malicious in the late rebellions, and are yet discern'd by them to continue in these bad principles, not exceeding 14 persons.

“ You shall represent the present state of the kingdom to his Majesty; and what hazard may arise to Prince and people, by the misrepresentation of persons and affairs, at such a distance, if all conveyance and counsel be in the hand of one servant; and therefore shew his Majesty how necessary it is, that Scottish affairs may be put in such a channel at Court, as may be for the good of his service, and the security of those who carry it on. Press therefore that his Majesty may call some of his Scottish Council, to a constant attendance upon his Majesty; by whose advice, he may order and dispose of his affairs in every thing.”

I know that some did blame Tarbet for producing Middleton's Instructions, and for burdening him with the guilt of this affair; and therefore I have set down Middleton's own letter to Tarbet, empowering him to found upon them.

“ MY LORD; I had, in my papers, fully justified you in every thing you did in the employments I trusted you with; and by this express I do declare, that you did nothing but according to your Instructions. I hope no misfortune that

has or can befall me, can render me unworthy of the esteem of honest men; nor shall I ever condemn any innocent person, for excusing any escape in me. You have many witnesses of your faithful and loyal deportment; and if my testimony be of any weight, I will never be wanting to give it, in all places where you are concerned; being with much affection, my Lord, your most faithful servant,

“MIDLETOUN.”

The Parliament here yielded, and proceeded to condemn what themselves had formerly done; having no shadow of defence for this recantation, but that his Majesty and they had been abus'd by Tarbet; which, how just it was, may appear from the papers themselves.

Lauderdale, not satisfy'd with this, resolv'd to affront Tarbet in plain Parliament; and in order thereto, swore he would produce some letters, wherein Tarbet pretended great kindness to him, whilst he was carrying on the billeting against him: which being told to Tarbet by Rothes, Tarbet told him, that in return of Lauderdale's kindness, he would produce in Parliament those letters which Lauderdale sent to the Parliament of Scotland, when he was President of the Committees of both kingdoms, *anno* 1647; wherein he persuaded them to deliver up the King, with many severe reflections upon the King's person; which being reported to

Lauderdale, he was so wise as to put a present stop to that design.

Lauderdale did, in this Parliament, assert Episcopacy, in a long formal speech, whereof he transmitted a full copy to his Majesty; and thus in publick, he cajol'd the episcopal party, whilst in Parliament, he favour'd and encourag'd the presbyterian.

Montrose, thinking that he stood fair in Lauderdale's favour, insisted here against Afsint, for selling his father; but the old cavalier party, because he had disoblig'd them in deserting Middletoun, and Lauderdale, because he had once own'd Middletoun, so far did conspire together to frustrate the pursuit; and Sir Charles Erskine, having got 3000 merks from that traitor, did much influence Lauderdale, who was also thought to hate Montrose's memory.

Middletoun having given, or at least declar'd, so many prerogatives in his Majesty's favours, Lauderdale (for all was ascrib'd to him,) resolv'd to shew his zeal for his Majesty, by prevailing with this Parliament to make his Majesty an offer of 22,000 men, who should serve him in any place of Scotland, England, and Ireland; which expression did much offend the English, who conceiv'd that Scotland should not have offer'd their assistance to his Majesty, in their kingdom,

in so publick a way. This Act was then design'd to be, and became thereafter, the foundation of our militia.

England had laid on great impositions upon our commodities that we carried into England; and in return thereof, Scotland had impos'd 60 *per cent.* upon English cloth, and the other manufactures of England: but because that burden was too insupportable, and was design'd only to bring England, by treaty, to some equality with us in commerce; therefore it was represented to the Parliament, (as the members of that Parliament still affirm, but I will not assert it,) that it was fit to empower his Majesty to order this, in the interval of Parliament, as he thought fit. But in place of this, an Act was brought in, the last hour the Parliament rose, empowering his Majesty to impose upon, or restrain all trade with foreigners, as he pleas'd; and was pass'd in a trice, without any opposition; being gloss'd, as said is: And this is that Act which is now made the foundation of so many gifts and monopolies, such as these of the tobacco, brandy, &c. and by which Act, it is alleged that his Majesty may impose whatever impositions he pleases, upon foreign commodities: but this being pass'd in a prerogative, cannot be questioned without his Majesty's special warrant.

After the passing of this Act, the Parliament was ridden; Oct. 9. and thus ended that Parliament which had so much bur-

den'd the country, and had so far counteracted their own proceedings; the one of which may seem a punishment of the other.

Sir Archibald Johnstoun of Waristoun having fled *in anno* 1660, resided in France; whereupon Alexander Murray was sent over there, and procur'd from the French King a warrant to apprehend him, and did accordingly bring him over from Rouen a prisoner, to the Tower of London; from which he was sent down to Scotland; and having been condemn'd as a traitor, in the first session of this Parliament, as President of the Committee of Safety, he was brought up the street discover'd; and being brought into the Council-house of Edinburgh, where the Chancellor and others waited to examine him, he fell upon his face, roaring, and with tears entreated they would pity a poor creature, who had forgot all that was in the Bible. This mov'd all the spectators with a deep melancholy; and the Chancellor reflecting upon the man's [*great parts*] former esteem, and the great share he had in all the late revolutions, could not deny some tears to the frailty of filly mankind. At his examination, he pretended that he had lost so much blood, by the unskilfulness of his Chirurgians, that he lost his memory with his blood; and I really believe that his courage had indeed been drawn out with it. Within a few days, he was brought before the Parliament; where he discover'd nothing but much weak-

ness, running up and down upon his knees begging mercy :
But the Parliament ordain'd his former sentence to be put
to execution ; and accordingly he was executed at the Cross July 22.
of Edinburgh. At his execution, he shew more composure
than formerly, which his friends ascrib'd to God's miraculous
kindness for him ; but others thought that he had only for-
merly put on this disguise of madness, to escape death in it ;
and that finding the mask useless, he had return'd, not to his
wit which he had lost, but from his madness which he had
counterfeited. However, it cannot be denied but he had
been a man of [*eminent parts and more eminent devotion*]
some parts and devotion ; but his natural choler being
kindl'd by his zeal, had been fatal, first to this kingdom, and
then to himself.

HIS Majesty, finding that the treaty of commerce and trade took no effect, because the English pretended that none could have the privilege of trading into their plantation, save those only who were English or naturaliz'd, did call the Scottish Council, in June 1669, and did intimate to them, that he design'd to prosecute the Union begun by King James, and to call a Parliament for that end, in which he was to name the Earl of Lauderdale to be his Commissioner. 1669. June 15.

Notice of this being brought to Scotland, every man rais'd his own conjectures upon this resolution, as his fears, jealousies, or inclinations led him. Some thought that Lauderdale had projected this, as a mean to obtain for himself the employment of Commissioner; which he could easily perpetuate in his own person during life, having none to persuade the King to divest him of it: and seeing the Treaty of the Union would be very tedious of its own nature, and might be protracted by him as long as he pleas'd, the Parliament would necessarily be current all that time. Others thought, that the design of this Parliament was to ratify Argyll's gift.

of forfeiture, and Tweddale's new entail, made by his Majesty, of the estate of Buccleuch. But the information from Court was, that his Majesty had found some instructions left by King James, wherein he recommended three things to his successors: The first was, that they should endeavour to fix a tripartite League with Holland and Sweden, to balance the power of either Spain or France: A second was, that they should endeavour to establish a firm Union at home, betwixt Scotland and England: A third, that they should get themselves declar'd supreme heads of the Church: The first of which being effectuated, as we observ'd formerly, by his Majesty, he had call'd this Parliament to establish the other two.

The people, upon the first news of this Union, shew a great averfion for it, and its contrivers; swearing they should, in one day, quit their crown and their lives. But such as pretended to dive more inwardly into affairs, could not be induced to believe that the Union was design'd, either by the King, or by our statesmen. For as to the King, they thought it destructive to his interest; seeing whilst the kingdoms stood divided, his Majesty had two Parliaments, whereof the one might always be exemplary to the other, and might, by a loyal emulation, excite one another to an entire obedience; and, if either should invade the royal prerogative, or oppose unjustly their Prince's just commands,

the one might prove a curb to the other's insolence. It was not, said they, to be imagin'd, that his Majesty would extinguish a kingdom out of which he was descended, and which might be so serviceable to him, and his successors, upon all occasions; a kingdom wherein he might, by his prerogative, govern much more absolutely than in England; for he could make peace and war here, without consent of Parliament, and might command twenty two thousand men to march wherever he pleas'd, and war amongst or against foreigners: and though he could not raise subsidies without consent of a Parliament, or Convention, yet he had 40,000 *lib.* sterling already settl'd upon him, by Act of Parliament 1661; and by another, 1662, he had it declar'd to be his prerogative, that he might dispose upon and burden our trade with foreigners as he pleas'd; by virtue of which Act, he might impose as much custom and excise upon iron, hemp, pitch, tar, timber, and such other commodities, which were necessary to us, as might amount to a greater sum than any taxation which we could grant. And as to the power over our Church, it was as absolute here as could be desir'd; the supremacy to us being now equal or greater to that which Henry the 8th took in England, but was resum'd by the Parliament in the reign of Queen Elizabeth, as inconsistent with the liberties of England. His Majesty had also more influence upon our Parliaments than in England, seeing with us nothing could be proponed in Parliament without

the approbation of his Commissioner; and his own or Commissioner's preference in Parliament with us, did overawe it as much as he could desire; nor were the members of our Parliaments, nor the subjects of our kingdoms, so much accustomed to liberty, nor did they think that *jus regni*, in Scotland, so narrow and limitable as it was in England.

It was likewise concluded impossible, that our statesmen would willingly see that Union carried on, whereby how soon the two kingdoms were brought into one, their offices would become unnecessary, and be extinguish'd with the kingdoms in which they serv'd. But of all others, Lauderdale was to lose most, because his [*arbitrariness*] absoluteness over Scotland would there cease; and those who were the chief ministers of England would then be above him here also; and he would then be in more hazard of ruin than now, because, whilst the kingdoms stood divided, he did not meddle in English affairs, nor were the English courtiers or statesmen conversant in those of Scotland, nor call'd by his Majesty to a share in them; whereas after the Union, all affairs would promiscuously be manag'd by the English favorites and him, who would be very ready to undermine him, when they found him to stand in their way.

It fell out, whether upon design or otherwise I will not determine, that after the proclamation of the Parliament,

many noblemen got precepts drawn upon the Exchequer in their favours for considerable sums; which occasion'd much jealousy amongst the people, who lookt upon these as bribes bestow'd upon them, to win them to a compliance in the matter of the Union, against which the people were, upon this account also, more incens'd. And though these favours were possibly well bestow'd, yet sure they were ill tim'd: nor could the proposal of an Union have been less acceptable to the people at any time, than at this, in which the remembrance of their oppression from the Usurper was yet fresh with them, who consider'd them as Englishes, and not as rebels, and knew the nation, but not the quarrel.

How soon it was known that the Commissioner was com'd off from London, many took journey to meet him; thinking that, near the Borders, their compliments would be lost in the crowd: but the Earl of Argyll outwent them all in his journey and compliment, and was then lookt upon as his great favorite. His Grace was, at the Border, met by the militia of the Merse, and seem'd to make it his great work to see the militias of each shire as he went alongst; boasting of these as his own invention, and endeavouring to assure them to himself upon that account: And at his entry to Edinburgh, he was saluted by the Magistrates in their gowns, at the water-gate; which compliment no former Commissioner had got; that having been usually reserv'd for our

King, upon whom nothing could have been bestowed which was here deny'd, save that the Provost, (for so we call our Maire,) did not carry the mace before him upon his own shoulder, as his predecessors us'd to do at the entry of our Kings.

Oct. 19. The Parliament was not here open'd by a sermon as formerly; for, immediately after the Commission was produc'd, the Lords of Articles were chosen thus: The Bishops choos'd the Noblemen; and the Noblemen and Bishops, the Commissioners for Shires and Burghs: And here it was first observ'd, that all the Lords of Articles would be still chosen by the Bishops; for they choos'd the Noblemen, and it was probable they would still voice, as they did here, all one way, when they join'd with the nobility in choosing the Barons and Burghs; whereas the nobility, not having correspondence as they had, would divide. And this is another grievance against the constitution of the Articles with us; against whom also a new matter of complaint was given in, that the Commissioner deny'd to suffer any member of Parliament to be present at the meeting of the Lords of Articles as formerly; by which those who were not of their number, did not understand how debates did run there, nor upon what reasons were the Lords of Articles induc'd to allow what they pass in a vote. But the pretext us'd for this was, that if all members of Parliament were allow'd to

come in to these meetings, they would become tumultuary, and would be too open, and so unfit for consultation and contriving, which was the end for which at first they were appointed. In the former Parliament, the Archbishops did sit upon the right hand of the throne, above the Dukes and Earls; and the Bishops upon the left, above the Lords Barons. But in this Parliament, it was order'd that the Archbishops and Bishops should sit together, and the Lords Barons immediately under them; and that the Dukes, Marquisses, Earls, and Viscounts, should sit together upon the left hand: And albeit in the former Parliament, all differences and competitions concerning elections from shires and burghs were try'd in open Parliament, yet these were in this referr'd to a Committee.

At the first meeting of the Articles, his Majesty's letter was read, recommending to the Parliament the matter of the Union; the copy whereof I have here insert.

“ CHARLES R.

“ My Lords and Gentlemen, We do often reflect, with thankfulness and joy, upon the goodness of Almighty God, for restoring Us to Our kingdoms, and them to their former liberty and peace: And We acknowledge it a further instance of God's goodness, that as he hath filled Our heart with kindness towards Our subjects of that Our ancient

kingdom, and with a constant zeal to promote what We judge conduceable to their welfare, so he hath blest Us with returns from them, of love, loyalty, and ready compliance with Our pleasure on all occasions, most suitable thereunto: of which Our late Parliament hath given signal proof, as well as Our other good subjects. And this gives Us confidence, that the earnest desire We have to render this island more happy than ever it was in times past, by settling amongst all Our good subjects within the same, a mutual affection, that may endure to all posterity, shall meet with a free concurrence from you Our Parliament, whom We have called together chiefly for this end.

“ The bringing of these two kingdoms, of Scotland and England, to as close and strict an Union as is possible, is the means that We propose for effectuating thereof; which, as it is the highest and noblest design We can have for witnessing Our royal affection to them both, so the accomplishment of it will raise Our satisfaction almost as high as Our wishes. For by the union of the hearts and hands of Our people, not only Our throne shall be strengthened, and they have peace and love settled amongst them for ever; but We shall have the glory of accomplishing what Our royal grandfather King James, of ever blessed memory, attempted as the greatest thing he could devise; and wherein he, who was a competent judge, placed the happiness of the Crown and

Kingdom; and wherein he meant to have gloried, as the chiefest action of his life.

“ We have fully instructed Our Commisſioner with Our intentions as to this ſubject, and concerning ſuch other matters as ſeem to Us to be uſeful, for the conſtant peace and welfare of the Church and State in that Our kingdom. You are to give him full credit, and he will acquaint Us with all matters; and what is further neceſſary for Us to do, will ſpeedily be performed; ſo we bid you heartily farewell. Given at Our Honor of Hamptoun Court, the 15th day of September 1669, and in the one and twentieth year of Our reign. “ C. R.”

After the reading of this letter, it was propos'd by the Commiſſioner, that the Parliament ſhould return his Majeſty an anſwer, wherein they would refer to his Majeſty (who had taken ſo much pains for this kingdom, and had prefer'd their intereſt to his own in this affair,) the nomination of the Commiſſioners who ſhould treat, and the appointing of time, place, and quorum; which was accordingly granted, and a letter drawn in thir terms.

“ Moſt Sacred Soverane,

“ The goodneſs of God in reſtoring your Majeſty to your Government, and thereby this your ancient kingdom to its

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former liberty and peace, hath been and will ever, with all humble duty and thankfulness, be acknowledged as the greatest blessing we are capable of in this world. And the many singular and renewed testimonies this kingdom hath since met with of your fatherly care, kindness, and zeal to promote its wellfair and happiness in all its concerns, have so engaged the hearts and affection of your subjects, that we can with confidence assure your Majesty of a cheerful concurrence from this kingdom, in every thing may tend to your Majesty's honor, or the good of your people.

“ We do with the like duty and thankfulness, acknowledge your Majesty's grace and goodness, in your desires to render this Island more happy then ever it was in former times, by settling among your good subjects within the same, such a mutual affection as may endure to all posterity. And since the bringing of your two kingdoms of Scotland and England to as close and strict an Union as is possible, is the mean your Majesty proposes for effectuating thereof, we shall be ready to give our hearty concurrence therein; and in order thereunto, are willing that Commissioners be appointed for this kingdom, to treat with such as shall be employed for the kingdom of England, upon the grounds and conditions of this Union; reserving always to the Parliament, to whom the resolutions of these Commissioners are to be returned, the consideration thereof, and the allowing or disallowing of

the same, as they shall judge fit. And in confidence of your Majesty's most excellent judgment, and great affection in all things relating to the happiness of your people, whereof this kingdom hath already had so many signal proofs, we do freely and heartily offer to your Majesty, the nomination of the persons to treat for this kingdom, with the appointing of their number, quorum, time and place of their meeting; and upon signification of your Majesty's pleasure therein, we shall give such Commissions and orders for promoting of the treaty, as (reserving the full determination of all to the Parliament as aforesaid,) shall witness our cheerful compliance with your Majesty's desires.

“ The Earl of Lauderdale, whom your Majesty to the great satisfaction of your people, and interest of your service, has been pleased to authorize as your Commissioner, hath in your Majesty's name renewed to us the assurances of your Majesty's care and respect to the good of this your ancient kingdom, for which we do humbly return to your Majesty the offer of our lives and fortunes, for the advancement of your Majesty's honour and greatness, and maintenance of your royal authority and government; and in every thing that shall be proposed by him, we shall not only give credit as to your Commissioner, but also such cheerfull and ready obedience, which may evidence the loyalty of our hearts.

And in testimony hereof, thir presents are by warrand, and in name of your Parliament, signed be, most sacred Soverane, your Majesty's most faithfull, most obedient, and most humble subjects and servants.

“ ROTHES.”

Oct. 21. This letter being brought into the Parliament, Sir George Mackenzie desir'd that the Parliament might be allowed to think upon so serious an affair till tomorrow; which overture Sir George Gordoun seconded, and withall added, that before the Parliament could condescend to nominate Commissioners, they behov'd to debate whether the propositions were convenient or not; in which they would meet with considerable objections, as that of the succession to the Crown, in case his Majesty should die without succession; for the lines of succession in England and Scotland were different, and would there divide. Whereupon the Commissioner rose in a great passion, and told that he consented that the Parliament should deliberate upon the letter now read, till tomorrow; but that he understood not, how any member of Parliament could be so bold as to enquire into the succession, upon a supposition that his Majesty and all the present royal line should fail. But the gentlemen were excus'd by Duke Hamiltoun; in whom this excuse was thought imprudence, because the doubt was started in his favors; the family of

Hamiltoun pretending to be next to the crown of Scotland, if the fucceffion of King James should fail.

Next day, the Parliament's letter was again twice read, as Oct. 22. the cuftom is; and Sir George Mackenzie, after twice reading of it, fpoke thus,

“ My Lord Chancellor,

“ Though I defign not abfolutely to gratify thefe popular delufions, which have grown up againft this intended Union, either from an exceffive fondnefs which our countrymen have for this their native country, or from their ignorance of the equality defigned in this Union, yet, my Lord, I wifh this Parliament would fo far indulge this pardonable zeal, as to confider maturely and flowly this fo great an affair; that the people may be convinc'd, that we are as jealous of our liberties as they could wifh us; and that England may know, that we are not fo weary of our liberties, as not to think them worthy of our exacteft pains. What is got cheaply, is little valued; and in thefe affairs, wherein we can do but once, we fhould deliberate long. There is likewise a decorum to be kept by great judicatures, as Parliaments are, in fuch great affairs; Nor fhould form and gravity fuffer our determinations to be even as fwift as our reafon, efpecially in treating with England, whole Parliaments do not pafs any Law, till it be propofed and debated feveral days.

“ We are now, my Lord, to confider the return to be made to his Majesty’s gracious letter, wherein he affures us of the continuance of his care for our happinefs; and wherein he propofes to us an Union with England, as the mean which can be moft conducive thereto. In anfwer to which, our intended return bears our humble and thankful acknowledgement of his Majesty’s favor, and our hearty concurrence to the Union propofed; from which no good fubject I hope will difsent, feeing to be unfenfible of his Majesty’s favours, were to be unworthy of them; and not to confent to an Union, if we be fure to be gainers thereby, were to be enemies to our own advantage.

“ But, my Lord, the anfwer bears beyond what the letter required; that we refer to his Majesty the nomination of treaters, the number, quorum, and of the time and place of their meeting: as to which, feeing I have thrown myfelf into the throng of fpeakers, I humbly propofe thefe three things, to be confidered rather as overtures than as objections.

“ Firft, Whether it be fuitable to our honor, to advance in this Union three fteps, before England meet us in one: and that we have done fo in this letter, appears from this, that to treat of an Union is one ftep; the fecond is to name Commiffioners; the third is to appoint their quorum, time,

and place of their meeting; all which are several steps, because they behoved, if they had been concluded in Parliament, to have had several votes and conclusions. Now, my Lord, it is most clear that when two parties are to be united, they should advance but equally; and certainly he yields who cometh farthest; and would it not be a great baffle to our reputation, if England should absolutely refuse a treaty, after we have gone so far to meet them. And though in this we but obey our Prince, and treat not immediately with them, yet seeing the treaty concerns them mainly, and not our Prince, I am confident he will not desire us to outrun them. Let us remember that Nature, in the distribution of her favours, hath bestowed ease and riches upon others; leaving us courage and honor, by which we made ourselves oftentimes masters of the other two; and when honour was in the field, our veins and purses were open upon all occasions; and therefore, though honour seem but a punctilio to others, let us be careful of it, as were our predecessors.

“ The second point I propose is, Whether it be fitter for his Majesty's service, and the intended treaty, that the nomination of the Commissioners should be referr'd to his Majesty; or rather that they should be nominated in Parliament. And that they should be nominated by the Parliament, may appear reasonable; first, because this Union, being a design that dissatisfies the people, and so mysterious that the event may

prove unsatisfying, (so great a dominion has fate over the best contrived of our actions,) it were just that we should rather take all the burden of their odium and the event upon ourselves, than transfer it upon his Majesty. And I remember that a famous Roman historian observes, that upon the close of Tiberius' reign, when the Senate began to have little kindness for their Emperour, they referr'd still to him the determination of every thing which they thought unfavourable.

2d. It is designed that this Union should be a national act; and the way to make it so is, that all its steps should be nationally concluded: and certainly the nomination of Commissioners is the chiefest part of the treaty, seeing much must be referr'd to their fidelity and conduct; and albeit a liberty be reserv'd to us to consider the procedure, yet at best few will be able to debate the determinations, which will have the advantage of being already agreed to by so many, and which we, who will not be upon the place, cannot well understand; being to be strangers to all the circumstances from which these conclusions are inferr'd. Let us remember, how little we contravert even what is determined by our own Lords of Articles: the English likewise will, in my opinion, be the more willing to treat with us, that they see us inclin'd to do it upon a national account, and not only in obedience to our Sovereign; which compliance they will judge to last no longer than the Prince's life to whom we granted it.

3d. The Parliament's nominating them, seems

more fuitable to his Majesty's command; for he hath call'd us together, that we may deliberate upon this grand affair, as his great council; and it is the duty as well as the nature of a council, to give their Prince advice, and not to refer to himself back again, what is by him desired of them. There needed no Parliament, if this were; nor should Parliaments be useful for Princes; being at such a distance as that they cannot exactly know who are fittest: for some private barons and burgeses must be chosen, because they understand coal, salt, or trade, which persons his Majesty can hardly know: So that the question is, not whether the King or Parliament, but whether the King or any one courtier or favorite, shall have the nomination. 4th. This may grow up into a dangerous preparative: for though we be now secure in a good and judicious Prince, and in able officers, yet these are not so immortal as I hope the same shall be; and it were dangerous to allow the nomination to a succeeding Prince, of whose favour and prudence we may possibly not be assured; and yet, doubtless, he would crave that as his due; for allowances from Parliaments become soon a prerogative; and successors think their prerogative invaded, when what was allowed to their predecessors is deny'd to them. 5th. Our Commissioners will be the more careful to satisfy us, that they are nominate by us; and we the bolder to quarrel their procedures: whereas few will have the courage to quarrel the proceeding of such as are pickt out by his Majesty, and

only for the fashion allow'd by us; it being natural for all trustees, to think themselves only accountable to their constituents. 6th. The last Commisſion, 1604, bears the Commiſſioners to have been nominate by the Parliament; and ſo does the Biſhop of St. Andrews' ſtory bear, to have been done both in Scotland and England. We are to be the greateſt loſers, and ſo ſhould be the ſloweſt concluders: for this Union will rather add us to England, than confound us with them: the representatives of both muſt ſtill reſide amongſt them; and in the intended Parliament of both, we muſt be ſtill at their devotion, becauſe they may overvote us upon all occaſions.

“ The third thing I intend to obſerve is, That ſo great an affair ſhould have ſome other baſis than the tranſient mentioning in a letter; neither conceive I it pertinent, that an answer to his Maſteſty's letter ſhould bear more than what was in the letter which is to be answered; ſo that I think there ſhould be a ſeparate Act of Parliament requiſite, eſpecially in an affair wherein we are to ſubvert the fundamental laws of our country. And I likewiſe think, that we ſhould recommend to his Maſteſty's care, the preſervation of our liberties, laws, and privileges, as in the Commiſſion 1604; elſe we are not as careful of our country as our predeceſſors: and albeit we cannot be confident enough of his Maſteſty's favour, yet can we not be careful enough of our

own native country: wherefore I with the letter should bear, that we would grant a Commission to treat, under such reservations as the Parliament should think necessary, in an affair wherein they behoved to be tender of their ancient privilege.

“This, my Lord Chancellor, I humbly offer, out of an innate affection to my country, to whose good I am content that my reputation, (which I know will suffer in this confidence,) should yield: and seeing it is fitter that the Parliament should be troubled by hearing such as are too forward, than that so great an affair should be prejudged by not speaking enough, (where too much can never be spoke, and upon a subject where that silence, which is a virtue at other times, should be now a crime,) I hope the Parliament will suffer this tediousness to pass for zeal.”

About the close of this discourse, he was interrupted by the Earl of Tweddale; who said that such long discourses were intolerable, especially where they intended to persuade the Parliament not to comply with his Majesty's desires: Which interruption was generally looked upon as a breach of privilege; and it was desired by Duke Hamiltoun, that the Earl of Tweddale should go to the bar; but the gentleman who was interrupted declared, that he had not been interrupted, but had finished his discourse; and thereupon that motion took no further effect.

Episcopacy was at this time in a low condition; for Lauderdale had been bred in an aversion for it; and Tweddale, who had got an absolute ascendant over him, perceiv'd that the Bishops had at first given unfavourable characters of him to his Majesty; whereas the presbyterians were devoted clients to his interest; and they believ'd that he was advancing their interest, even when he did seem to persecute them. But this suppos'd unkindness for that government did appear more eminently than formerly, in their usage of the Archbishop of Glasgow, and in their carrying on the Act of Supremacy.

Burnet, Archbishop of Glasgow, was bred a minister in England, most zealous of their forms and worship; and had been advan'd to be Bishop of Aberdeen, by the favour of the Earl of Teviot; from which he was translated to be Archbishop of Glasgow, by the same intercession; and when the Archbishop of St. Andrews fell under a cloud with Lauderdale and the Chancellor, he was, to eclipse the other, prefer'd to be a member of the Exchequer and Privy Council; and was thereafter, upon the Earl of Middleton's being put from being an extraordinary Lord of Session, put in his place; whereby his advancers concluded, that he should have been a constant enemy to that party. But how soon he saw that Episcopacy was daily undervalu'd, and become daily less reverend in the eyes of the people, he did resolve to own his

order and hierarchy at any rate; and in pursuance of this design, he did represent to his Majesty, and to the Bishops of England, that Scotland would return to the old principles, if the present state of affairs continued for any time; and, mov'd by that principle, he did write the letter which we formerly mentioned, wherein he inform'd his Majesty, that the fanaticks were own'd in Council: and when the indulgence was granted, some ministers of his diocese entreated licence from him to register this following testimony of their zeal,

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.....
.....
Upon the account of this paper, a great noise was made by the Earl of Tweddale and the Register, who were his enemies; because the former letter did aim at them, as the great abettors of the fanaticks; and it was represented, that Episcopacy had been for no other reason more subservient to monarchy, but because monarchy had made it its great interest to support that order; and that if his Majesty should not restrain the growing insolence of the present clergy, they would exceed the insolence of those to whom they succeeded. Nor was this paper less seditious than the Remonstrance; nor the Archbishop of Glasgow more innocent than Mr. James Guthrie; for both equally designed to debar the King

from interposing any way in the affairs of the Church. Whereupon the Archbishop was call'd to the Council; and it was intimate to him, that it was his Majesty's pleasure that he should not be present at this present Parliament, but should be confin'd to Glasgow, till his offence were further consider'd; in obedience to which he retir'd; and thus one great design was effectuated, wherein it was contriv'd that he should be remov'd from Parliament till the Act of Supremacy should pass; against which, it was fear'd that he should oppose himself, and stir up others.

The reason why he was not presently turn'd out of his bishoprick was, because his enemies were not as yet fully assur'd, that the clergy would consent to the Act of Supremacy, if they found that it would produce such effects: But how soon that Act was past, his Majesty, by a letter, as supreme head of the Church, declar'd his see vacant, and he was mov'd to resign it in his Majesty's hands; which some blam'd as an act of too great despondence and fear in him: but he was induc'd to do it, by the vows they made to pursue him as a traitor, if he did not; the ground of which process they intended to found upon the former letter, which was said to be, the lying betwixt the King and his people. But to this it was answer'd by some of his friends, that he needed not fear that accusation, seeing it was palpable now to the world, that the fanatics had been assisted by some

Councillors; for by the Indulgence, many of them were repon'd to their former ministry. Thus he went off the stage, generally admir'd, even by the fanaticks themselves, for preferring his conscience to his gain, and for fearing nothing but to offend it; and by this example, we may see how advantageous it is, to adhere to the principles we have once own'd.

The Archbishop of St. Andrews had, in the first sermon preach'd to this Parliament, and upon the very next Sabbath after that Glasgow was confin'd, stated three pretenders to supremacy; the Pope, the King, and the General Assembly of the Presbyterians; and had, in a long discourse, disprov'd all their several pretences; for which, it was thought, he had been turn'd off, if the Archbishop of Glasgow had not suffer'd so lately: but occasion was taken from this, to propose in the Articles, that his Majesty's supremacy should be yet more fully explain'd by Act of Parliament, that no scruple might remain from the extravagant insinuations of either the *jure-divino* Episcopist, or Presbyterian. Most of the Lords of the Articles inclin'd to the motion, because by this, all the government of the Church would fall in the hands of laicks, and especially of Councillors, of which number they were: and the nobility had been, in this and the former age, kept so far under the subjection of insolent churchmen, that they were more willing to be subject to their Prince, than to

any such low and mean persons as the clergy; which consisted now of the sons of their own servants or farmers: And the Bishops had so far and so often insinuated, when his Majesty was zealous for their hierarchy, that all power resided in him, and that presbytery was antimonarchical, because it restrain'd this his just power, as that now the people were induc'd to believe, that the government of the Church was but an arbitrary policy, which the magistrate might alter as he pleas'd.

This motion was but faintly oppos'd by St. Andrews; who was yet under some consternation because of Glasgow's fate, and of the invective discourses which were every where vented against his sermons: yet he said, in the Articles, that he believ'd his Majesty would not desire the supremacy offer'd to him by that new Act; which he did in expectation, that if his Majesty were consulted in it, he would advise it with the Bishops or episcopal Councillors of England, who would oppose it as unfit. Whereupon the Act being sent up, it was immediately sent back by his Majesty, who approv'd it fully, without shewing it to any of that nation; nor us'd he to consult the affairs relating to either nation, with any but those who were natives of it. And thus the Act of Supremacy was past, without any of the amendments which the clergy did give in.

The debates and transactions which fell in at this time, discover'd very much to our statesmen, how far each of the present clergy stood affected to the supremacy of the civil magistrate in church affairs, and in what they approv'd or disapprov'd the late Indulgence; for the advice of many churchmen, not properly interested, was ask'd at this time, rather to know their inclinations, than for information; and it was easily found, that the Bishop of Dumblane was the most proper and fit person to serve the state in the church, according to the present platform of government now resolv'd upon; for he was in much esteem, for his piety and moderation, amongst the people, and as to which, the Presbyterians themselves could neither reproach or equal him; albeit they hated him most of all his fraternity, in respect he drew many into a kindness for Episcopacy, by his exemplary life, rather than debates. His great principle was, that devotion was the great affair about which churchmen should employ themselves; and that the gaining of souls, and not the external government, was their proper task; nor did he esteem it fit, and scarce lawful to churchmen, to sit in councils and judicatories, these being diversions from the main. And albeit his judgement did lead him to believe, the Church of England the best modell'd of all others, both for doctrine and discipline, yet did he easily conform with the practice of the Christians amongst whom he liv'd, and therefore liv'd peaceably under Presbytery, till it was abolish'd: And when he

undertook to be a Bishop himself, he oppos'd all violent courses, whereby men were forc'd to comply with the present worship, beyond their persuasions; and he had granted a latitude and indulgence to those of his own diocese, before the King had allow'd any by his letter. This made the world believe, that he was author to his Majesty of that publick Indulgence; and the statesmen, who were unwilling to be authors of an innovation, which some there thought might prove dangerous, were well satisfied to have it so believ'd; but, however, these principles render'd him a fit instrument in their present undertakings.

It was then concluded that St Andrews should be laid aside; but yet he maintain'd still his court, though not in the first splendour, yet above his late appearances; the reasons of which were, First, that his late difference with the Earl of Rothes, which seem'd irreconcilable upon either hand, gave Tweddale strong assurances that he might be gain'd to a dependence upon him. The second was, that his humour, (and as some said his disinterestedness in the matters of the religion,) made him more pliable to the present design of subjecting the church to the state, than any other person with whom they could fill his place. The third was, that they were assur'd to depose two Archbishops in one year. Upon which consideration the Commissioner, being resolv'd to keep him in, he resolv'd likewise to put all outward marks of re-

spect upon him; and in the Parliament, he spoke of him, and to him, with great show of kindness, and visited him at his lodgings: Nor was St Andrews wanting in his returns; for he magnified all the Commissioner spoke, and courted all his friends with great submission. To please the King, who retain'd still some kindness for Episcopacy, and to take off all jealousies from such as favour'd that order, Lauderdale did, in all his discourses, speak with much respect of the reverend Archbishops and Bishops; and upon St Andrew's day, he Nov. 30; past two Acts in their favours; one to make the parishes liable for the insolencies committed against ministers; and another, containing severe certifications against such as paid not Bishops' duties, and Ministers' stipends. The first of these Acts was enforce'd as necessary, because Ministers, to the great contempt of religion, had their houses robbed, and were nightly pursued for their lives, in all the western shires; so that they were forc'd to keep guards, which exhausted their stipends, and abstracted themselves from their employments: and albeit those shires pretended, that this was done by highway men, who shewed their insolencies under the pretext of religion, calling themselves presbyterians, and enveighing against the poor Ministers whom they robb'd, in the language of that sect; yet it was concluded, that these insolencies were committed by those of that persuasion, who were known to think that all injuries done to Episcopal Ministers, were so many acceptable services done

to God: and it was most probable, that the same zeal which carried them on to plunder, imprison, and execute all such as differed from them, in the last rebellion, and to shoot at the Bishop of St Andrews upon the street, might incite them to great outrages, when they were countenanced, as they thought, by authority, and under silence of night, when they might hope for impunity: nor was ever the west Country known to be infected with robbers at other occasions, so that they were connivers at least in those crimes, and therefore deserved to be fined upon such occasions. These motives induced the Parliament to agree unanimously to this Act; and how soon both Acts were past, his Grace touched them immediately with the sceptre; which he used to do, as a testimony of kindness, and when there were any apprehensions, that the Acts might be thereafter contraverted, or craved to be amended, in any of these branches.

Yet all this outward zeal for Episcopacy, could never prevail with the Bishops to believe Lauderdale their friend: nor were the leading Presbyterians terrified at these, as marks of his disesteem; because fanatics were advanced to all places of trust, and the friends and servants of the grandees, (who could not dissemble so well as their masters,) laugh'd at Episcopacy, and the malignant party: nor is there any surer mark to know the master's inclinations, than by considering whom he employs, and what these speak.

Lauderdale had, of a long time, entertain'd with Lady Margaret Kennedy, daughter to the Earl of Cassilis, an intimacy which had grown great enough to become suspicious, in a person who lov'd not, as some said, his own Lady. This Lady had never married, and was always reputed a wit, and the great patron of the Presbyterians, in which persuasion she was very bigot; and the suspicion encreas'd much, upon her living in the Abbey, in which no woman else lodg'd; nor did the Commissioner blush to go openly to her chamber, in his night gown: whereupon her friends, having challeng'd her for that unusual commerce, and having represented to her the open reprehensions and raileries of the people, received no other answer, than that her virtue was above suspicion; as really it was, she being a person whose religion exceeded as far her wit, as her parts exceeded others of her sex.

The Council had proceeded very far in ordering the militia, warranted therein by the former Act of Parliament 1662, as was pretended; wherein the Parliament had promis'd to assist his Majesty with 20,000 men, whenever his Majesty should have occasion for them; But it was believ'd, that no constant militia was then intended by the Parliament; and that offer was then understood to be only of raising so many men, when his Majesty's service should require the same; and therefore it was thought fit, that the Council's procedure, and the present state of the militia,

should be approven, and an Act was past in the Articles for that effect. But in that Act it was order'd, that deficientes should be quarter'd upon; against which it was objected in Parliament, [*by Sir Peter Wedderburne and Sir George Mackenzie,*] that "quartering was a word odious to the people, and it had been only accommodated by custom to the unpeaceable and arbitrary exactions us'd in our late times, and so would, upon a double account, be unwelcome to the people, who hated all the vestiges of, and terms us'd in the former war: And by it, such as were employed in the militia might be induc'd to believe, that they might continue the former arbitrariness which accompany'd quartering; that it was unreasonable that a poor country man, who had but one bed, should be with his wife turn'd out, to accommodate a foldier; and that quartering would learn the servants employ'd therein, to be lazy at their return, and insolent: Nor was quartering us'd in England, where the militia was better known than here; for that nation refus'd to admit of quartering, and had order'd, that he who propon'd in Parliament the overture of quartering upon deficientes, should go to the bar." This mov'd our Parliament to appoint such as propos'd poynding, and such as propos'd quartering, to meet and form the procedure desir'd by either; and it was declar'd, that they would prefer poynding, if it could be made practicable: whereupon such as were for poynding drew the Act, which is now printed, and having presented it to the Parliament,

it was allow'd by plurality of voices; few or none having dissented, but such officers of the militia as were members of Parliament. It was also remitted to the Council, to appoint as much expenses, and as many diets for mustering, as they pleas'd; which was disliked by many good country men, who thought this power too ample; seeing, upon pretext of this, a heavy imposition might be laid on, without consent of Parliament; and the present militia might at last turn to a constant army, upon a letter from his Majesty, or by the means of some leading Councillors, who might find that fit for their own protection or designs. But the truth is, it was one of the main designs of our grandees, amongst all this Parliament, to get all power devolv'd over upon the Council; hoping thereby to make Parliaments unnecessary, and to enhance all the government to themselves, who had the Council at their devotion.

The Parliament 1661 had, for the encouragement of fishing, appointed that all salt which should be employ'd upon curing of fishes, whether vented within or without the country, should be free of that 40s. Scottis which was then impos'd upon every boll of foreign salt: but the Exchequer did thereafter most unwarrantably, (because contrary to an express law,) appoint all fishes which were spent within the country, to lose that privilege. Nor did this encroachment sist there; for the customers presented an Act, wherein they

crav'd that the person that bought the falt, should once pay the said 40s. and that it should be repay'd by the customers, to all such as could by certificates prove, that the same was employed upon fishes. By this means, they contended that no man was prejudg'd, seeing what they payed in, would be repayed; and this would secure the King's customs, which were much impair'd daily as to falt; seeing such as bought falt, pretended still an immunity from this imposition, upon pretext that they were to employ the same for the fishing. Against this Act, much opposition was made by the Burghs; and Sir Georgē Mackenzie, (whose shire was, most of all others, most concern'd in the fishing,) objected, " That this Act was too early a revocation of the former privilege, granted *in anno* 1661, which would show too much the unconstancy of our Parliaments; and by it, that trade which was our chief commodity, and so most to be cherish'd, would be too much burden'd; for many would venture upon the fishing, who had not present money to pay the customers. 2d. Nothing was more destructive to trade, than to subject the merchant to the customer; and by this overture, the customer might dispose of the merchant as he pleas'd; for he might delay the repayment of the money which should be given him for each barrel, or quarrel so the instructions produc'd, as might ruin to the merchant his voyage; and that if more merchants were going with fishes to the same port, he might prefer one to another. 3d. By the forsaide argu-

ments it did appear, that this new way propos'd would encumber trade exceedingly; for, beside the former disadvantages, the merchant would be forc'd to make two voyages, in place of one; the first, to the place where he was to enter his fishes, and receive back his custom; and the second, from that place, to the port where they were to be sold: and that the customers would need too great a stock of money, to have as much as might pay all the fishers; for sometimes all of them would be forc'd to fish in the same place. 4th. Sometimes, and oftentimes, the fisher would have his salt a long time unemployed; and if he paid custom for it at buying, he would lose at least his annual rent, and sometimes his whole stock; for the salt might perish by sea, or otherwise, before it was employed."

Upon this debate many members spoke, and all after debate call'd for the vote; but it was still delayed, because the Commissioner found so many inclin'd to oppose the Act: nor is there any thing more advantageous for carrying any point that is debated, than to have many speak for it; for by that means, those of a different judgment are discourag'd from answering, and such as are indifferent, are thereby induc'd to run alongst with the plurality of speakers, imagining that they will prevail. But at last the Commissioner rose in a passion, and [*swore*] told, that though the Parliament stopt the Act, yet they should gain

Dec. 15.

nothing by it; for he would, by virtue of his Majesty's prerogative, pepper the fishing, as he term'd it, with impositions: To which, after a long and deep silence, [*Sir George Mackenzie answer'd*] it was answer'd, "that [*he believed*] that prerogative granted to the King, of disposing upon our trade with foreigners, would not authorise his Majesty's Officers of State, nor any else, to impose arbitrary customs; the design of that Act being only, that his Majesty should, during the interval of Parliaments, regulate our trade with England, in order to the treaty of commerce which was to be settled betwixt us; at least it could not warrant the taking away a privilege, granted to the fisher, in the same Parliament wherein this prerogative was granted: but without debating what his Grace might do in other cases, the Parliament would here desire the vote, whereby it would appear what was the opinion of the Parliament, who were his Majesty's great Council; and if thereafter, his Majesty should think fit to burden trade, his subjects would succumb to all his royal commands." This press'd so the Commissioner, that he desir'd it might be voted; and the votes were equal; and thereupon the Chancellor's vote was desir'd as decisive: but the Earl of Kinghorn desir'd it might be voted a second time; for he alleg'd that, by his calculation, the Act was refus'd by many votes. At this the Commissioner storm'd exceedingly, and told that his Lordship might pursue the Clerk, (Mr. Thomas Hay,) for falsehood; but that there was

jus acquisitum to the King, by the vote already past. This put the Chancellor, who was unwilling to disoblige the Commissioner, or the people, to desire that the voices might be again consider'd by the Clerk, without calling the rolls, as Kinghorn had desir'd: and the clerk having, for the second time, affirm'd the voices to be equal, the Chancellor, after an apology, approv'd the Act. Though in this Act, the advantage of the King's customs was pretended, yet the Earl of Kincardine, and the other salt masters, were only to be gainers by it; and to all the former objections it was answer'd, that the fishers might, if they pleas'd, employ Scottish Salt, which being the product of our own manufactories, ought to have all encouragements: but yet experience teaches, that our own salt cannot cure fishes, or beef, which is to be carried beyond the line; and scarce what is spent at home, in our neighbour nations; and if hides be cur'd with our salt, they will fall out in holes: the like is also observ'd in other commodities.

There was another Act past the same day, appointing the merchant to give his oath, upon what goods he abstracted, without paying custom or excise; but this was vehemently oppos'd by many, who contended that the contrary was enacted by a late Act, and that this would occasion perjury, rather than the encrease of his Majesty's customs; and none would gain by it, but such impious people as contemn'd the

religion of an oath; for these would, by cheating the customers, and forswearing the cheat, be in a condition to undersell all honest men; and by this means, even the poor merchant, who was honest, should be vexed with continual pleas by the customers; who would either break them, by abstracting them from their trade, or else would force them to ransom themselves by a composition.

In the passing of these two Acts, it was observable, as falls ordinarily out, that those who were not concerned in their immediate interest, did still vote for the Commissioner; and thus oftentimes the whole country is, by parcels, prejudged; for those who have salmon, care not how much be imposed upon beef, &c: whereas, when it comes to their share to be concerned, they who have the other commodity do, out of revenge, or at least by the same reason, desert them. Thus the nobility neglect the burghs; and they again desert the nobility, in what is their concern: But it is the duty of every member of Parliament, to oppose all impositions upon what commodity soever, and to adhere to another; concluding still that they are members of one body, and that each, *pro indiviso*, represents the whole kingdom.

The Commissioner had that day said, that the stealing of the King's customs was a crime, which was to be provided against; whereupon Sir George Mackenzie replied, that if it

was a crime, no man could be forc'd to swear for it; for by no law under heaven, was it ever ordain'd that a man should swear in what was criminal. This, and all the other passages of that day, join'd with Sir George owning the burghs, in whom it was alleg'd he had no proper interest, made his Grace swear, in his return from the Parliament, that he would have that factious young man remov'd from the Parliament: to effectuate which, he call'd a Council of his favorites; and it was there contriv'd, that his election should be quarrel'd, because he held only lands of the Bishop of Ross, but not of his Majesty, and so was not a free baron. But they were at last diverted from this resolution by the Register, who assur'd them, that this would make the people jealous of some close design to overturn their liberties; which, as they believ'd, that gentleman defended upon all occasions; and that he would glory in his exclusion, because it would be believ'd, that they could not effectuate their intentions, if he were allow'd to keep his place in Parliament.

These western rebels, who were excepted from the benefit of his Majesty's general pardon, being cited to appear under the certification of treason, compar'd not; and therefore they were only to have been outlaw'd, or denounc'd fugitives, by our form of process. But the Advocate was so zealous to have them forfeited, that he gave in some queries to the Council, which they referr'd to the Session; and the

Session, in their resolutions, declar'd that such as were cited for treason might be forfeited, though absent, upon a full probation of their guilt; seeing it was unreasonable that their contumacy, which was the superaddition of a new crime, should put them in a better case than those who appear'd; and there being *jus quæsitum* to his Majesty, by their rebellion, it was unreasonable that his Majesty should be defrauded of his benefit, by any act of the rebels: Likeas by the civil law, and the laws of other nations, probation may be led against absents, for treason, and they thereupon forfeited. Upon this, a sentence of forfeiture was led against the absents, in the Justice Court; and their lands were expos'd to sale, by the Commissioners of the Thesaurry, at very inconsiderable rates: but the people were, by the Act Recisory, and the other proceedings of the late Parliament, render'd so jealous of any such conveyances, that no man offer'd to buy them. This the Presbyterians ascrib'd to a kindness in the people for their principles, and gloried, that the forfeitures of such as oppos'd the covenant, were bought up the first week; whereas neither time nor sollicitation could find merchants, for buying the lands of such as had adher'd to the cause of God. But the Officers of State did impute this nicety to the manner of procedure in leading the forfeiture, against persons who were absent, which the people did justly then conclude to be unlawful; seeing none could with us be forfeited, in absence, except in Parliament, who might dispense with the

ordinary formalities: Whereupon a new citation was given to those persons, to appear before the Parliament, to answer to the crime of treason; and upon their contumacy, a committee was appointed to consider the depositions of the witnesses formerly led, and the sentence following thereupon; which being approved by their report, an Act was presented, which did bear, that such as should rise in arms openly against his Majesty, might be forfeited in absence. Against this, Sir George Mackenzie represented, that by the Civil Law no probation could be led against absents; and that by our Law, all probation should be led in presence of the party and inquest; and this was most just; for if the defender were present, he would propone declinators against the witnesses, and propone interrogatories, which might clear his innocence; or defend himself by an exculpation: as for example, though the witnesses prov'd that he was in the rebels army, yet he might prove that he came there by a mistake, or by force: notwithstanding of all which the Act was past.

The Isles of Orkney and Zetland, were impignorated to the Earl of Morton's predecessors, for 20,000 *lib.* Sterling; but this Earl had married the Earl of Middleton's daughter, and so all pains was taken to divest him of this opulent fortune, and chance furnisht his enemies with a considerable pretext; for Mortoun had intromitted with a Dutch vessel, which shipwreckt upon the coast of Orkney, during the late

war, in which were found 12,000 *lib.* Sterling of gold. This he was so unwise as not to conceal; whereupon his right was reduc'd in the Session, and this decret was ratified in Parliament, and these Isles annext to the crown, to remain as a part of its patrimony in all time coming.

It was design'd, at this time, that all tradesmen should be declar'd free in all the Burghs Royal of Scotland, for payment of a very small acknowledgment; which would encourage strangers to come, and settle in this kingdom, as in Holland, where every man is free of the trade, upon the payment of ten guilders: whereas now we are forc'd to buy all things abroad, because our Deacons and Trades here, will allow no expert tradesmen to live amongst them; nor are any admitted to be artificers, except such as either married the daughters of tradesmen, or have serv'd as prentices; whereby the ignorance and unskilfulness of workmen is transmitted to posterity, without any possibility of reformation. This, Sir Andrew Ramsay oppos'd, to insinuate himself with the Trades of Edinburgh, who are absolute disposers of Magistracy; and this he obtained from the Commissioner, because he was still employed by his Grace to win the Commissioners of burghs, to assent to what was propos'd; upon whom Sir Andrew had a great influence, because he, as Provost of Edinburgh, was their president, and he had always the leading vote in Parliament. And thus the publick good

is made subservient to the meanest interests, and is over rul'd by the most inconsiderable and unworthy persons.

In this Session of Parliament, very many fairs were granted to noblemen, gentlemen, and towns: whereupon a most judicious merchant observ'd, that though it was commonly believ'd, that these were advantageous to the country, and tended much to the ease and service of the people, yet they would prove very prejudicial to trade and commerce: for when there were few fairs in Scotland, they were much frequented by strangers, who thought them worthy of their monies, from England, Ireland, and sometimes from Holland, France, and Flanders; but now the commodities of the countries were vented in so many places, at so many different occasions, that not any one fair would be so considerable as to deserve any concourse of strangers, or even of country merchants who liv'd remote; and all these fairs were so many new occasions, given to the peasants, to intermit their ordinary employments, and to debauch at such meetings.

Upon the last day of that Session many Ratifications were presented, none whereof were contraverted, save that of Argyll's donative of his father's forfeiture; against which, the Earls of Erroll and Kinghorn, the Lairds of M'clane, and very many others, oppos'd; but the Commissioner did so violently own him in it, that no man durst speak, without

Dec. 23.

an interruption from the throne. Yet so averse were the members of Parliament to that gift, wherein so many poor creditors were defrauded, that the Commissioner durst not put it to a vote: to cover which, it was asserted by the Register and some others, that it was not the custom of Scottish Parliaments to vote private Ratifications, because, as they alleg'd, none were concern'd therein except his Majesty. But the truth is, that this assertion was most unwarrantable; for a Ratification is an Act of Parliament, and nothing can be accounted such, except it be either establish'd such by a vote, or else be so universally assented to by all, that when the Chancellor asks if a vote be necessary, all the members declare there needs none; and therefore, though Ratifications be oftentimes so clear, that few are concern'd, and those who are concern'd are secure by the Act *Salvo*, and therefore no member uses to desire a vote for them; yet if any member of Parliament desire the vote, even in passing a Ratification, I see not how it can be deny'd; nor why a Ratification should be brought into the Parliament, if it be not necessary that it should be pass'd by a vote. Tweddale retir'd, when this affair of Argyll's was under debate; pretending that he was a party, where Erroll was concern'd: but the truth is, he retir'd lest Argyll should have suspected him; and his unkindness for Argyll did here appear by his retiring, and in that all his friends and dependers spoke, and which was more, solicited against the passing of Argyll's Ratification. And

albeit some concluded, that the Commiſſioner ſhew, in this, much kindneſs for Argyll, and that the reports which were ſpread of their mutual and late unkindneſs were falſe, yet in this the Commiſſioner was concern'd in honour; for having obtain'd the [*wiſe*] gift, and done ſo much in proſecution of it, it had not been generous to have left it half undone: and therefore he vow'd that morning, that he ſhould have that Ratification paſt, in ſpight of all oppoſition; but ſwore, as ſome ſaid, that he ſhould never own Argyll for the future.

But becauſe Lauderdale, Argyll, and Tweddale, had been ſo united in a junto formerly, I ſhall here touch a little upon the reaſons of this alteration. Before Tweddale was fully confirm'd in Lauderdale's favour, he employed Argyll, as Lauderdale's minion, to reſtore him to that kindneſs which he had loſt under the Engliſhes. But how ſoon he needed Argyll no more, he begun to conſider him as a rival in his courtſhip, and thought that Lauderdale waſted too much of his favour with the King, in maintaining Argyll againſt ſo much oppoſition. Upon this, he oppos'd ſome of Argyll's deſigns; and when Argyll deſir'd that the jurifdiction of Juſtice General over all the Iſles might be conferr'd upon him, Tweddale prevail'd with his Maſteſty's Advocate to oppoſe that in Exchequer, as dangerous to the poor ſubjects over whom it was granted; who being remote from redreſs, and having oppos'd the late Marqueſs of Argyll, under the

conduct of Montrose, could not but expect all rigour: and this jurisdiction would abstract the subjects from an immediate dependence upon the King, and tie them to the following of a nobleman, who might thereby grow insolent: likeas, one of King Robert the Bruce's advices to his son was, that no subject should be entrusted with an absolute jurisdiction over the Isles. These reasons the Exchequer transmitted to his Majesty; by which procedure, Argyll, who was naturally violent, and who thought that he deserv'd far kinder usage from Tweddale, was so proud that he burst out into passionate railings against Tweddale; which being carried to the other, did so feed their mutual aversion, that it appear'd thereafter openly in all encounters; and was heighten'd by the industry of the Chancellor, who studied, by all means, to make their differences irreconcilable; caressing Argyll, by so much the more as he found him hate Tweddale. It fell out also, about the beginning of these differences, that the Lord Newbottle, who had married Argyll's sister, crav'd his tocher; which being refus'd, and compensation being crav'd upon some old accounts which were discharg'd, Tweddale did own Newbottle, his minion and cousin; but finding that he could not prevail with Argyll in so just a matter, he resented the slight as an affront. Notwithstanding of which difference betwixt them, Lauderdale retain'd still his former kindness for Argyll, till Argyll desir'd to marry the Countess of Balcarras; and then it was that Tweddale expected to engage Lauderdale

in his quarrel; which he brought to pass by persuading him, that the young Earl of Balcarres, their cousin and pupil, would be ruin'd by the match: and therefore he prevail'd with Lauderdale, to desire Argyll to leave off to pursue that match; which Argyll refused, being engag'd in an amour, and scorning to desist from any such project, to please Twedale. This refusal inflam'd Lauderdale; and after that, his friendship soon declin'd.

Upon the 23d day of December, the Parliament adjourn'd, without any discourse from the Commissioner, (as use is;) who only desir'd to carry back the Honours, viz. the Crown, Sword and Sceptre, to the Castle, in the ordinary way; and desir'd the wives of Edinburgh might take notice, that he had not sold the Crown to the Englishes, as was inform'd.

[In this Parliament, the members were rather overaw'd, than gain'd to a compliance; for Lauderdale was become so lazy, and was naturally so violent, and by his Majesty's favour and his own prosperity, was so far rais'd above all thoughts of fear, that he never consulted what was to be done; nor were the members of Parliament solicited by him, or his friends, upon any occasion; whereas, on the contrary, he would oftentimes vent at his table, that such Acts should be past in spite of all oppositions. But as men naturally admire most any thing at a distance, because of the defects of the object,

and of the unconstancy of the admirer, so the people, and even the Parliament, did begin to undervalue Lauderdale; and by his bawdy discourses, and passionate oaths, he lost much of his esteem amongst the Presbyterians: and that raillery and constant speaking, which was his ornament, sometimes, in private conversation, seem'd very in a Commissioner; and his prevailing in all that he propos'd, was attributed more to his power than his conduct. Though the Chancellor was suspected to have had some aversion for him, and that it was thought he was in some danger, he so dexterously manag'd his humour, by compliance, gaming and raillery, that Lauderdale, who knew not what it was to dissemble, did doat upon him, and would do nothing without his advice: and amongst other artifices, whereby the Chancellor recommended himself to his favour, I cannot forget two. The first was, that he was most severe in Parliament, as President, to all his own friends, when they oppos'd any Act that was presented: another was, that he constantly brought into the Session, all the pleas or causes of such as were any way related to the Commissioner; and I remember that he own'd one of Lauderdale's friends, against his own cousin; by which methods he fix'd his court, but lessn'd his reputation: Whereas, on the other hand, the Duke of Hamilton, who had of a long time hated Lauderdale, by his opposition to every thing which might prove a burden to the country, did gain himself more honour, than he could incur hazard.]

Before his Grace return'd to court, application was made to him, by some expert merchants, that he would erect a Society for Fishing. The motives, whereby they were persuaded that this might be advantageous, were, 1st, That the Hollanders made forty, fifty *per cent.* by that trade, and did oftentimes double their stock; and our own merchants made considerable gain by their fishing in lochs; and therefore we might at least secure our annual rent better that way, than amidst so many bankrupts. 2d, It was probable that we could gain more than the Hollanders, because we lay nearer the fishing than they did, and might load twice, for their once. 3d, We might have cask and salt laid up in magazines, near the places; and would get more assistance from the masters of the ground, when the fishes swim'd in lochs; in which the Hollanders never fish, and so are oftentimes disappointed, when our countrymen fish well. 4th, A Company, with suitable privileges, might fish much more easily than our countrymen, who were not associated in Companies; for they might be free, by an Act, of the excise impos'd upon foreign salt, and all the other materials employed in the fishing: nor could ever such as bought their fishes within the country, bankrupt with them; because the society might consist of the most eminent in all judicatories, whom none would hazard to prejudge, and who would redress, by their sentences, any such attempts. 5th, Our countrymen might fish, in winter, cod and ling; which the Hollander could

not do, seeing he durst not flay upon the coast in that season. 6th, That this kingdom had many poor persons, who would willingly serve at easier rates than Hollanders did; and by this, the country would get vent for their meal and beasts, which gave no price. By these, and other considerations, many enter'd into the Society; into which no man was receiv'd, without stocking in at least 100 *lib.* Sterling; and for their encouragement, his Majesty enter'd in 5000 *lib.* Sterling: but when it was desir'd, that his Majesty's share should be affected with the first loss, as in the East India Company of France, the Commissioner refus'd to allow this overture; but he oblig'd himself, that all materials should be free'd from custom and excise, and that all other Societies should be discharg'd by proclamation; which was done accordingly. Yet many gentlemen refus'd to enter, fearing that the merchants, who behov'd to manage all, would cheat the other partners: and many merchants refus'd to enter in a Society, wherein so many noblemen were engag'd, by whom they were afraid to be overaw'd: yet the stock did soon encrease to 25,000 *lib.* Sterling.

1670.

The Parliament of England, to repair their slighting his Majesty's proposal of an Union so long, resolv'd that they would be behind with Scotland in nothing but in time; and therefore, that they might exceed us in somewhat else, they not only referr'd to the King, the nomination of place, and

time for treating, and persons who were to treat, but they proceeded to grant them a Commission; nor would they limit the Commissioners to be chosen, with any instructions; albeit the treaty, under the reign of James, were limited to do nothing prejudicial to the laws, liberties and privileges of either kingdom: which limitations shew, that only an Union in commerce was then intended; and because of this limitation, the Union took no farther effect, than a simple removal of the old hostile laws, and the naturalizing of the subjects of either nation, which had been formerly, by the case of the *post nati*.

The Parliament of Scotland having re-assembled upon the 22d of July, to which day it was prorogate by proclamation, the Commission granted by the Parliament of England was read in the first meeting of the Articles, and another drawn for Scotland, scarce differing in a word; which though some thought dishonourable, yet behov'd to be done, to obviate all cavils which might have arisen upon the difference of the Commissions; nor did any dissent from this Commission, seeing it was reserv'd to the Parliament to debate freely all the determinations of their Commissioners. Yet some thought it was securer to debate, before any treaty, the most material and obvious points; as, "if there should be one or two Parliaments;" "if our laws should be preserv'd entire," &c.: because it was most probable, that the subjects of both kingdoms

would be more free to debate before, than after that the determination of the courtiers of both nations had predetermined them, by the King's consent and approbation; and that it was more convenient, not to suffer the Commissioners to spend much time in debating what they knew not would be acceptable, or approved by the Parliaments, after all their pains. Likeas it would be an affront to the Commissioners, and some injury done to the King, to cast what they had determined; and since our predecessors had limited their Commissioners, in King James' time, why should they not now; for he was as zealous for Scotland, and our Commissioners then as able and good country men, as any could be now chosen: And albeit England had granted an unlimited Commission, yet our case was different from theirs; because the English Parliaments were known to use greater freedom, in debating what was predetermined by courtiers or committees, than ours did; and their Commissioners were to sit at London, where their Parliament was to meet; and so could easier know the sense and inclinations of those for whom they treated: and the Englishes were to be guided by the event. Some also thought that the Englishes had a great advantage over us, in that many of their Commissioners had much influence upon his Majesty, who was to be the main decider of all contraversies relating to the Union; whereas none of our countrymen, save Lauderdale, could pretend to that advantage; and it was probable, that he would

not oppose any thing for which his Majesty was strongly inclin'd.

The Earl of Athol had been lately disoblig'd, by having the command of the Highlands taken from him, which was given to Lawers; and therefore, to repair that loss, and to repay his constant dependence upon Tweddale, to which he was entirely gain'd by the Laird of Blackbarronie and Sir Patrick Murray, his kinsmen, and Tweddale's creatures, he was made Captain of the King's Guard; which employment, the Earl of Newburgh had kept till then, notwithstanding all the efforts us'd against him by Lauderdale and others, as a constant adherer to Middletoun. Nor had they then been able to have outed him of that charge, if he had been able to attend court, as he did formerly; for no man could manage better his favour, [*et entendoit mieux son monde, as the French speak,*] nor was more vigilant than himself. But how soon his corpulency and goutishness had taken from the King, and all his friends, all hopes of recovery, it was represented that times in Scotland were like to grow disorderly, and would require a captain, who would make it his business to attend in person his Majesty's service: And thus his Majesty was prevail'd with, but Newburgh was secur'd in a pension, equivalent to the gain he made by the troop; and thus Lauderdale was reliev'd of his last enemy, and Tweddale secur'd at last in all offices, except the Chancellor's. This

charge of Captain was first fought by the Earl of Southesk; but how soon it was once motion'd, Tweddale struck in for his minion. The Earl of Home was cousin to the Countess of Lauderdale, for she was a daughter of the house of Home; and therefore he was made a Councillor; which obligation being yet recent, he was fitted to be a Commissioner for the Union.

The fanatics, encourag'd by the Indulgence, and confiding in Lauderdale and Tweddale, had in the interval of Parliament, kept very frequent Conventicles, especially about Linlithgow; [*and the episcopal clergy did endeavour to prove, that devotion was not the main design; but that*] they scorn'd to obey any governors of a different profession; and they intended to force the King and Council, to restore them to their former sway; leaving those able men, who were indulg'd to preach, and running after silly ignorant creatures, who had been banish'd: and one Porter, whom the fanatics had undervalu'd formerly, did set up a Conventicle betwixt the parishes of Mr. George Hutchison, Mr. Alexander Wedderburn, Mr. William Odair, and Mr. Miller, the great chiefs of their profession, and had shun'd extremely their congregations; and great multitudes had gone from their parishes, to the hill of Beth in Fife, where they kept a Conventicle in the open fields, being all arm'd: and when some of his Majesty's guard came up to them, they were blind-

folded, and kept in the midst of the congregation till their sermon was ended. Their insolencies were [exaggerated] by letters from the Chancellor to his Majesty; who took very much pains, upon all occasions, to represent the danger of the Indulgence; which he did in odium of Tweddale, the author of that innovation. But Tweddale improv'd it to a better advantage, having got Newburgh thereupon remov'd, as was formerly observ'd. To repress these insolencies, with which the episcopal party in England loaded Lauderdale very much, he pass'd an Act in this Session, whereby Aug. 20. all such as kept not their parish churches, were to pay the eighth part of their yearly rent: and albeit some desir'd, that this Act might be restricted to the western shires, who were only criminal in this case, yet the Act was generally extended to all; and all such as kept Conventicles in the fields, were declar'd punishable by death. And because the fanatics had constantly refus'd to depone upon oath, who were present with them at their Conventicles, seeing they thought not themselves oblig'd to accuse others; therefore it was declar'd, by an Act, that every man should, under the pain of banishment, or any such arbitrary punishment as the Council pleas'd to inflict, be oblig'd to answer upon oath, all such questions as the Council should propose. This was quarrell'd by many members, because they thought that it should only have been restricted to pursuits against Conventicles, which gave the rise to the law; and that in their gene-

ral terms, it might prove a snare to the people, who might, upon any flight occasion, be brought from their houses, and be oblig'd to divulge the greatest secrets of their friends: For it was the same thing with the old form of process, *Super Inquirendis*, which was abrogated by King James; and would turn another Inquisition. Thus these fanaticks wrong'd their country, not only in breaking the good old laws, but in occasioning the making of too severe new statutes: And yet it was said by some, that it had been better to have made the new laws less severe, that they might have been the more severely observ'd; and that thir laws were made so severe, upon design, that they might not be observ'd; and that the fanaticks might clearly see, that the grandees were not in earnest.

The Church being thus settl'd, a subsidy is crav'd for defraying the expences of such as were to be employ'd in the Union; and to give this subsidy the greater colour of reason, the repairing of the King's houses was therewith join'd. The Provost of Linlithgow propos'd twelve months cess, hoping thereby to screw himself into favour, and to carry one of the nominations. Others, led by this extravagant example, propos'd, some ten, some eight months cess; till the Commissioner, who had only an instruction for three months cess from his Majesty, told them that less than six was sufficient; whereupon some of his favourites propos'd

five. But the Duke of Hamiltoun, after he had represented the poverty of the country, desir'd that it might be put to the vote, whether five or three months cefs should be granted; and, by one vote, it was carried for five. When this vote came to the Parliament, as a determination of the Lords of Articles, [*Sir George Mackenzie represented,*] it was crav'd, "that the names of the Commissioners should be first shewn to the Parliament, before they could well allow them any maintenance; for much of the quota would depend upon their quality; it being unreasonable that a burges, or baron, should get as great allowance as an Earl, or an Earl as a Duke; and that the time during which they were to stay, should likewise be condescended upon; for they should not have so much for two months, as for ten:" and it was said "that the nation expected that thir Commissioners would be as generous as their predecessors were, who fought no subsidy; nor did the present Commissioners of England get any; at least they should not be pay'd till their return, as other Commissioners of Parliament are, by their shires; and then the Parliament would gratify them according to their behaviour." No notice was taken of this overture, but the sum condescended upon by the Articles was approven, and the way of payment, and the terms at which the payment was to be made, remitted to the next day; in which an Act was brought in, bearing the sum to be payable at three terms, and that all debtors should have

retention of a tenth part of their annual rents, for enabling them to pay the cefs impos'd. The great design of this overture was, that personal estates should be brought in to bear a share with real estates; for the nobility and gentry thought it unreasonable, that the land rent, which was now become so low, by the mean prices of victual, should still bear all burdens; whereas money, which is a more profitable and easy gain, did bear none, albeit those who had their estates in money, had an equal share in the protection of the Prince, for which this and all other tribute was pay'd; and that the subjects being equally concerned in this Union, all should contribute equally, to defray the expence of such as manag'd the treaty. Albeit this was allow'd in the Articles, yet the Commisisoner, forgetting the measure given to the Earl of Kinghorn, in the vote concerning the salt, caus'd vote it over again; but still it carried in the Articles, that the personal estates should be burdened; notwithstanding of which vote, the nobility and gentry were [so] alarm'd by their creditors, who vow'd that they would presently call for their money, and that they should never more have trust, that most of them resolv'd to vote, that personal estates should not be burden'd. And though the contrivers of this overture condescended, that the present retention should be inconsiderable, upon design that it might be the easier granted, looking more to the preparative than the present gain; yet many debtors thought the advantage so inconfi-

derable, that they difown'd it, and fo the contrivers were taken in their own fnare. When the Act was brought in to the Parliament, thofe lawyers who were members did, in long formal fpeeches, fucceffively one after another, plead an immunity for perfonal eftates; and the Commiffioner himfelf being an enemy to the overture, the perfonal eftates were, at that time, fecur'd againft any impofition; and after thefe Acts were touch'd with the fceptre, as ufe is, the Parliament was adjourn'd, without any fpeech from the Commiffioner. Aug. 22.

Immediately after the rifing of the Parliament, the Commiffioner went to court; and with, or foon after him, arriv'd the Scottifh Commiffioners for the Union; an account of whole tranfactions I have here fet down, according to the order of their feveral meetings, and as I had them from Sir John Baird, who was himfelf one of the members.

“ MINUTES of the Tranfactions in the Bufinefs of the Union of the two Kingdoms.

“ September 13, 1670.

“ The Commiffioners did wait upon my Lord Secretary, at his lodging in Whitehall; where he told them that the Lord Chancellor and he, by the King's appointment, were to go to the Lord Keeper, to fpeak with him anent the

ordering of the next day's meeting of the whole Commissioners of both kingdoms; and appointed those for Scotland to attend at the same place, at six in the evening, that they might be brought in to the King, to kiss his hand, and receive an account of what was concluded with the Lord Keeper, in order to their next day's meeting: which accordingly they did, being in number sixteen. His Lordship then told them, that the place appointed for the first day's meeting, being the 14th September, was the Exchequer chamber; but that thereafter the meetings were, by the King, appointed to be in Somerset House; and that their order of sitting was to be, that the first in the English Commission, was to sit first at the one end of the table; and the first of the Scottish to sit first.

“ All they would do then was, to read the Commissions under both the great seals; whereof there were two exhibited, one in Latin for the Scottish, and another in English; and that Andrew Forrester was to be Clerk for the Scots, and one Mr. Walker for the English. Thereafter the Scottish went to the withdrawing room of the bed chamber, till his Majesty came from the park, where they all kissed his Majesty's hands: he said it was dark, he could see none of our faces; but that he had appointed us to meet upon that business, which he hoped would be for the good of both kingdoms; and that he had no other design, but that alone. My

Lord Secretary said, that there was a full quorum of those his Majesty had honour'd with that trust; and that he believ'd, the kingdom of Scotland could very well have entrusted the whole affair to his Majesty, without them; which his Majesty said they might safely do: then he told them, that they were to meet the next day with the English Commissioners, in the Exchequer chamber, at nine in the morning; and that they would meet upon Saturday thereafter, at Somerset House; and that he had appointed rooms for that purpose."

"September 14, 1670.—According to his Majesty's appointment, a full quorum of the Commissioners of both kingdoms meet in the Exchequer chamber at Westminster, and took their places as was agreed upon; the Archbishop of Canterbury, first in the Commission, sitting at the middle of a square table; and the Earl of Lauderdale, his Majesty's Commissioner for the Parliament of Scotland, and first in the Commission, sitting next in the middle, on the left hand: The Lord Keeper, Sir Orlando Bridgeman, sitting next the Archbishop, presided for the English, and the Earl of Lauderdale for the Scottis.

"After they were all set, it was mov'd by the Lord Keeper, that the Commissions granted by his Majesty to the English Commissioners, might be read, which was accord-

ingly done; and thereafter it was mov'd by the Earl of Lauderdale, that the Commiffion for the Scottis might be read likewise, which was alfo done: but the Commiffion for the Englifh, was in the Englifh tongue, and that for the Scottis, in Latin; and albeit the Earl of Lauderdale told that there were two under the great feal of Scotland, one in Latin, and another in Englifh, both alike, and defir'd to know which they defir'd to be read, the Keeper faid, the Latin; it being conform to our own cuftom. The next meeting was appointed to be on Saturday next, at Somerfet Houfe, at nine in the morning. The Englifh Commiffioners went all out of the room firft; and the Scottis ftaying behind, were defired by their prefident, to meet him the next day at Whitehall, betwixt nine and ten in the morning."

"September 15, 1670.—The Scottis Commiffioners met at the Earl of Lauderdale's lodging; who was pleas'd to relate, what was the arife of the affair of the Union, and what had paff betwixt him, the Earl of Tweddale, and others of the Scottis, with the Lord Keeper, before his firft coming to hold the Parliament in Scotland, in order thereto; and what had paff, the day before, at the Lord Arlington's houfe, where were prefent with him, the Earl of Rothes; and for the Englifh, the Lord Arlington, and Duke of Buckingham, and Sir John Trevor: The refult of which meeting was, that in order to the Commiffioners' procedure, a paper was

to be drawn, containing three general propositions; which paper was to be sent by the King's Majesty, as a message from him, to the meeting at Somerset House, upon Saturday thereafter. There was likewise shewn there to the Commissioners, the original of the first treaty in Parliament, sign'd by the Commissioners of both kingdoms, with the seals thereto appended; the only original remaining, the other two having been lost and put out of the way."

"September 17, 1670.—The Commissioners for both kingdoms met at Somerset House, at the hour appointed; where there was exhibited to them a message from his Majesty, whereof there were two originals, one for the Scots, and another for the English, as the matter whereon they were to debate; which were five in number.

- "1. The preserving to either kingdom their Laws, Civil and Ecclesiastick, entire.
- "2. The uniting of the two kingdoms into one monarchy, under his Majesty, his heirs and successors, inseparably.
- "3. The reducing of both Parliaments to one.
- "4. The stating of all privileges, trade, and other advantages.
- "5. The securing of the Conditions of the Union.

"These were the heads his Majesty was pleas'd to offer to the Commissioners; but left it to them to follow such me-

thod, and make such propofals on the fubject, as fhould occur to them. It was mov'd by the Earl of Anglefie, that they might prefently fall to confider upon the method; but the matter being new to the Scottifh Commiffioners, it was mov'd for us rather to delay till Thursday, at nine of the clock: which was agreed to, and fo they adjourned till that time.

“ The general meeting being adjourned, the Scottifh Commiffioners went to a room prepar'd for them apart, to confult what was to be done, and to confer about the method; and, after fome difcourfes, refolved to meet at the Earl of Rothes, Lord Chancellor, his lodging, upon Monday the 19th instant, at 5 of the clock: but before that meeting, there was a meeting of eight of the number, for confidering the feveral branches that were to arife from each of the propofals.”

“ September 19, 1670.—The Scottifh Commiffioners met at the Earl of Rothes' lodgings; where it was refolved, that feeing the Englifh had agreed amongft themfelves, that nothing was to be concluded or agreed upon, unlefs the whole Articles were agreed to, that therefore we fhould not be averfe from beginning either at the fecond or third Article; and that we fhould likewife propofe, that nothing fhould be binding upon us, till all were agreed to, put in writing under all our hands and feals; and that debate fhould be *viva voce*. They adjourned our particular meeting till the 20th,

at my Lord Lauderdale's lodging at Whitehall, betwixt nine and ten in the morning."

" September 20, 1670.—The Scots met at the Earl of Lauderdale's lodging, but concluded nothing as to the method; the main thing debated there being, whether there should be an Union or not; which Sir John Nisbet contended could not be, as it was propos'd in the second and third Articles, as being destructive to the fundamental government of the kingdom of Scotland, and tending to take away our Parliament, which, he said, neither the Parliament could do, nor were the Commissioners empower'd to divest the electors of that power; and alleged an Act of Parliament, printed Par. 8. James 6. whereby it was declar'd treason, to attempt the alteration of the Constitution of the Parliament, or to transfer or alienate the kingdom. 2. He alleged that the meaning of King James, by the Commission granted by him to treat, was not of this nature; and that it behov'd to be the rule of our treaty. 3. He alleged the union amongst the Republicks of Greece, as Sparta, Athens, &c.; in which union, the sovereignty was reserv'd to each Republick. This last was first in order, and to it the Earl of Lauderdale answer'd, that the United Provinces had, to each of them, their sovereignties reserved, and yet they were united in one body, which was represented by their several representatives, in a Common Council: So the kingdoms of

Spain, and the thirteen Cantons of Switzerland; and it was added, that of Poland and Lithuania: and as to the Republicks of Greece, it was certain that they were represented, in their respective Republicks, at the General Council of the Amphictions. But nothing being concluded, the meeting was adjourned till the 21st, at 8 in the morning, at Whitehall."

"September 21st, 1670.—We met at Whitehall, according to the appointment, where we voted that the second Article should be first treated of; which is, that there be an Union of the two kingdoms, in one monarchy, under the King, his heirs and successors, inseparably. This being once voted, the Earl of Lauderdale behov'd to go to the King, and Rothies presided; and then it was debated, whether the Article should be debated on as it stood, or if the word "successors" should be expunged, or altered to the words "King James his posterity;" in regard the word "successors" was ambiguous, and, by the law of England, any usurper coming to the Crown, was the King's successor. But it carry'd that the Article should run, "under the King and his heirs, inseparably;" by which expression it was left undetermined, in case of the failing of King James's posterity, (as God forbid) whether the two kingdoms should remain united, or fall to the respective heirs of the Crown of England and Scotland. Then they adjourned till four in the evening, at the same place.

“ *Post meridiem*.—The Scots met again, at the same place and hour, and voted the third Article as it was rectified; and that we agreed thereto, in order to the Union, with the *salvos* agreed at the Earl of Rothes’ lodging, upon the 19th instant; and spoke of nothing else but what should be the carriage at the general meeting, in case they did not agree upon the Article as we had voted it. After dissolving, the Earl of Lauderdale went to the Duke of York, and gave him an account of the Article; and thereafter reported to us, in the gallery, that his highness was satisfied with it; and that he thought the King would come, and sit with the Commissioners of both kingdoms, if need were.”

“ September 22, at Somerset House.—The Commissioners of both kingdoms, according to the appointment of the 17th instant, having met; the Lord Keeper then said, that since all the debates were to be *viva voce*, nothing was to be put in writing, but only the result of the debate; and that was not to bind either kingdom, till all were agreed upon, and put in writing under all our hands and seals. To which it was answer’d by the Earl of Lauderdale, that we had the very same under our consideration, and therefore agreed thereto. Then the Keeper resumed the debate, concerning the method, and at what Article we were to begin; and it was agreed, to begin at the third Article; which being read by the Keeper, it was excepted against by the Scottish Com-

missioners, that we could not agree thereto as it stood, unless the word "successors" were delete; the word being ambiguous, and might be extended as well to an usurper, as to the lawful King; especially considering the statute *undecimo* of Hen. 7. that an usurper being once crowned, he was reputed lawful successor. To this it was answered by the Earl of Anglesey, that the Article, as it stood, was the King's own drawing; and that the words "heir" and "successor," in their law, were homonymous; and that none could be successor to the Crown but the King's heir.

"Sir Heneage Finch, Attorney General, said, that the statute of Hen. 7. was not well understood; for by it, persons acting for the usurper that was crown'd, were only indemnified; but it did not make the usurper a lawful King. The Scottish Commissioners not being satisfied, both sides remov'd to their several meeting places, to advise what was to be done; and after we had debated it amongst ourselves, that in regard of the ambiguity of the word "successors" in our law, we could not agree to the Article as it stood, the word being general, and sometimes taken for a singular successor, who may be a stranger, and contradistinct from an heir; it never being our meaning that there should be an Union, but in the person of the King and his heirs; and that at least it behov'd the heirs succeeding him. About an hour thereafter, both Commissioners having return'd to their

meeting places, the Keeper propos'd that the Article might run indefinitely thus, "that there be an Union," without mentioning his heirs and successors. This we thought worse of, and would not so much as take it to our consideration; whereupon he told us, that they agreed to the Article as we conceived it, and crav'd it to be amended; and appointed Anglesey, the Attorney General, and Sir Lionel Jenkins, to meet with the Earl of Kincardine, the Lord Advocate, and Sir Robert Murray, for drawing that Article in writing: and it came to be mov'd, that the Union might be in the person of the King, and his heirs, and the posterity of King James; with which we were better satisfied, it having been mov'd at one of our meetings amongst ourselves, but we apprehended the English would have stumbled at it; and that the motion was from Sir Lionel Jenkins; but this last being made after we were up from the table, was not insisted on, nor seconded. They adjourned till Saturday the 24th, at nine before noon."

"At Whitehall, September 23.—The Scottish Commissioners met at the Earl of Lauderdale's, and resolved, at the next general meeting, to propose the first Article to be debated on. In order whereunto, they appointed the Lords Register, Advocate, and Stair, the Lord Newbyth, and Sir Robert Sinclair, to extend the same in as general and comprehensive terms as might be, and to have it in readiness against

the next day, at 8 of the clock in the morning, at Somerfet House, in their own apartment; which accordingly was done."

" At Somerfet House, September 24, 1670.—The Scottish Commissioners met in their own apartment, where they read the paper that was prepar'd by the Committee, in order to the first Article; with which they were satisfied: and it being mov'd, that the English might yet be satisfied, that King James his posterity were mentioned in the settlement of the Union, it was heartily agreed to, and accordingly concluded; and the Article rectified in the general meeting of the Commissioners of both kingdoms. Thereafter the paper which the Committee had prepar'd was read; and the question anent appeals being started, as being inconsistent, that one part of the monarchy should be liable to appeal before the Parliament, and another not liable; and the Scottis alleging, that their decreets and sentences, *in civilibus*, were not at all questionable, by their law, by the Parliament of Scotland; the debate was laid over, and the Commissioners adjourned their next meeting till the 13th of October; his Majesty being to go to Newmarket."

" Somerfet House, October 13, at nine in the morning.—The Commissioners of both kingdoms met, and, by order from his Majesty, adjourned till Thursday the 20th instant, at nine in the morning."

“ Whitehall, October 18, 1670.—The Scottish Commissioners met at the Earl of Lauderdale's, and did again consider what was fit to be spoken, at the next general meeting of the Commissioners of both kingdoms, concerning appeals; and agreed, that there could be no appeals from the Council and Session, to the Parliament of Great Britain; and appointed their next particular meeting, at the same place, at 5 of the clock, being 19th October.”

“ Whitehall, October 19, 1670.—The Scottish Commissioners meet as formerly, in order to their next day's general meeting; and discoursed concerning that branch of the third Article, in relation to appeals.”

“ Somerset House, October 20, 1670.—The Commissioners of both kingdoms having met, the Lord Keeper moved, that the paper given in by us, the 24th September, relating to the securing of our Laws and Judicatories, Civil and Ecclesiastick, might be well understood; for, as it was conceived, it was thought by the English Commissioners, that we intended thereby to exeeem the kingdom of Scotland, from the obedience of the legislative power of the Parliament of Great Britain. Whereupon the Scottish Commissioners withdrew, and upon some debate amongst themselves, agreed that the Earl of Lauderdale should say, that it was not our meaning, by that paper, that every particular law of

Scotland should be unalterable by the Parliament of Great Britain; but the way how that alteration was to be made, would be proper to be considered, when we came to that Article concerning the Constitution of the Parliament. This answer being made, the English desir'd they might withdraw; and, after a pretty space, returning, they said they behoved to consider our answer; and we adjourned till Saturday the 22d, at nine before noon."

" Whitehall, October 21, 1670.—The Scottish Commissioners met, and fell to consider amongst themselves, the second proposal of the King's paper, for reducing the two Parliaments into one; and agreed, in the first place, to the Article as it stood. Then it was considered, that of the two branches of this Article, first to be considered was, what should be the proportion of burdens, and the proportion of members, we were to have and bear; and at which of the two we were to begin. It was said, that burdens were first to be consider'd; being that which certainly would influence the proportion of members; in so far as, if the burdens were small, the proportion of members might be the less: but it was carry'd by vote, that we should begin at the members, as the most natural method and incident this day."

" Somerset House, October 22, 1670.—The Commissioners of both kingdoms being met, the Lord Keeper said, that the

Commissioners for the kingdom of England had consider'd the paper given in by us, together with what the Earl of Lauderdale had said from us, anent the way how the laws of Scotland should be altered; which they thought, could not now fall under our consideration, till we came to the second proposal, as it stands in his Majesty's paper; and therefore desired we might go to another Article. The Earl of Lauderdale, as having power from the rest, agreed thereto; and propos'd the third proposal to be the subject matter of the next day's meeting, which was appointed to be Thursday the 27th instant, at three in the afternoon. After adjourning, the Scottish Commissioners withdrew to their apartment; and after many discourses, as to the second proposal, for reducing both Parliaments into one, and having talked both as to the burdens, and as to the proportion of members, which were the materials of the Union on our part, and which was generally thought by all, behoved to be the nobility, and the Commissioners from the Shires and Burghs of Scotland; in end we fell upon this motion, that both Parliaments might be preserv'd, so as that there might be a certain number of Englishmen appointed to sit in the Scottish Parliament; and upon great emergents concerning the monarchy, and his Majesty's interest, his Majesty might call both Parliaments together at Westminster, or where he pleas'd, to meet and consult concerning the publick affairs of the monarchy. The motion being propos'd by the Earl of

Lauderdale, was generally applauded, as that which tended most to his Majesty's interest, the securing of our laws, judicatories, customs, and offices, and would give great satisfaction to the people, and Parliament of Scotland, who had authorized us."

" Whitehall, October 25, 1670.—The Scottish Commissioners met; and in order to their meeting next Thursday, with the English Commissioners, did unanimously resolve, that they would adhere to the second proposal, for reducing both Parliaments into one, as it stood in his Majesty's paper; so as none of the constituent members of Parliament were to be excluded from making up the Parliament of Great Britain."

" October 27, 1670.—By order, the general meeting was adjourned till the first of November."

" October last, 1670.—The Scottish Commissioners met at Whitehall, and resolved unanimously again, to adhere to the second proposal as it stood, without any other alteration of any of the members of the Parliament of Scotland."

" Somerset House, November 1.—The Commissioners of both kingdoms being met, the Earl of Lauderdale said, that in name of the Scottish Commissioners, he did agree to his

Majesty's second propofal, for reducing both Parliaments into one. The Lord Keeper faid, they agreed likewise, but defired to know, what balance, or proportion of members, did we underftand were to be fent from Scotland, to the Parliament of Great Britain. To this it was anfwer'd by the Earl of Lauderdale, that his Majesty having been pleas'd to honour us fo far as to nominate us to treat about the Union, and the Parliament of Scotland having authoriz'd us, and the Parliament confifting of Lords Spiritual and Temporal, and of Commiffioners for Shires and Burghs Royal, we did not intend, by our conceffion, in the leaft meafure to exclude any of thefe, from having vote in the Parliament of Great Britain, who had authorized us: and therefore we agreed to the propofal as it flood; which we could not do, if we fhould treat upon proportions and numbers. The Lord Keeper, fpeaking to the Earl of Efsex, the Archbishop, the Earl of Anglefey, and fome others that were next to him, they defir'd a time to think upon it; and fo adjourned till Tuefday, November 8th, *post meridiem*."

"Whitehall, November 3.—The Scottifh Commiffioners met there, where the Earl of Lauderdale told them, that fince we were refolved to adhere to the fecond propofal, *in terminis*, he would take an opportunity to fpeak with his Majesty, that he might appoint them a time where to wait upon him, and to receive his Majesty's commands, in order to an

adjournment, and to our return to our several employments at home, in case that the English Commissioners should not agree to his Majesty's proposals, as we had done; and he thought that Monday next should be the day."

" November 8, 1670.—The meeting of the Commissioners of both kingdoms was adjourned, by order from his Majesty, till Saturday the 12th instant."

" Whitehall, Nov. 12, 1670.—The Earl of Lauderdale intimated to the Commissioners his Majesty's pleasure in writing, for adjourning the meeting upon the Treaty till the last Thursday of March; and appointed the Commissioners to attend at Whitehall, upon Monday the 14th, to receive his Majesty's commands."

" Whitehall, Nov. 14, 1670.—The Scottish Commissioners attended his Majesty, that day, in the withdrawing room of the bed chamber; where the Earl of Lauderdale, in their name, gave an account of what had past at the Treaty, till the day of adjournment; and said, they had done all they had done, in obedience to his Majesty's commands; and that, upon consideration of his Majesty's interest and greatness, they had condescended, that both Parliaments entirely should be united, and that nothing less could have satisfied the Parliament of Scotland, who had authorized

them; and that, upon his Majesty's call, they would be ready to wait upon the Treaty, whenever he should give them order for making the dispatches; and that they, being now to return to their several employments, wherewith his Majesty hath entrusted them, had desired him, in their names, to assure his Majesty of their most dutiful and humble obedience to all his commands."

"In return to which his Majesty told them, that in regard of the other weighty affairs he had upon him, he thought it not feasible, at this time, to bring that Treaty to a conclusion; but that he would take another time to it; and that he had many times found the kindness of the kingdom of Scotland to all his concerns and interests, and that they should find him very careful of them, and of all matters wherein they were concerned; and that, against the next meeting of the Commissioners, he would think upon some expedient, for removing the difficulties that had hitherto lain in the way of the Union."

This event had that grand design, which had so long exercised the thoughts, and entertain'd the expectations of two kingdoms: and thus it stopt, rather to the wonder, than dissatisfaction of both nations, who expected that the wise statesmen of both sides, had adjusted all the differences that

could have interveen'd, before they brought it in publick : And Scotland was highly displeas'd at Lauderdale's forwardness, in bringing their privileges into such hazard, and their country to such trouble and expence, before that affair was fully settled in private ; at least, till all generals that could have been forseen, were accorded to : and there was nothing more obvious, than to have consider'd what proportion of burdens, and members to represent Scotland, had been agreed upon ; for he might have easily known by the English, if they would have allow'd all our Parliament to be incorporate with the English Parliament ; which, though the English declin'd, yet seems [*to me*] very just.

The Earl of Lauderdale did now begin to shift Tweddale, and profess'd that he was asham'd to have it believ'd, that he was yet under tutory ; which was instill'd in him by my Lady Dyfart, and the Earl of Rothes : nor was Lauderdale himself unwilling to be freed of a person, who was an enemy to his amours with her, for whom he now profess'd an open gallantry. The first appearance of that breach was, when Sir John Baird went to ask Lauderdale, if he would write for Tweddale to come up from Scotland, (where he had stay'd, to manage the affairs of that nation in Lauderdale's absence ;) to which Lauderdale, in a huff, answer'd, that if he pleas'd he might come, but he would write for no man : And when Tweddale came, and was receiv'd near London by his own

friends, Lauderdale did publickly rally their journey; and two days after, when Tweddale was to go out to Ham, where my Lady Dyfart liv'd, upon design to compliment her, Lauderdale told publickly at table, that he could not go without his governor.

This breach was yet made wider by another accident, which was this. The Chancellor, dining at Blackbarony's house, did express his dissatisfaction with the Advocate and Register, for walking a foot in the streets, having so considerable an allowance; calling them "damn'd Lawyers." This having been told them, they, but especially the Advocate, resented deeply the expression; at which the Commissioner, (considering that they were Tweddale's only supports,) storm'd extremely, and swore he would complain of them to the King, as persons who design'd to divide the Commissioners for the Union, by their fantastick whimsies. And thus, in place of uniting the nations, these wise Commissioners disunited themselves, and returned to Scotland, as men from a rout.

Whilst they were busied about the Union, the Advocates were commanded by the Lords, to swear the Regulations, in obedience to his Majesty's letter; whereupon they withdrew for two whole months, viz. from the tenth of November till
Nov. 10.
January; having first represented to the Lords, in a large

speech, that these Regulations were impracticable, and that it was impossible to observe them, without the inevitable hazard of perjury. But Sir Robert Sinclair, then Dean of Faculty, coming down from London, having been one of the Commissioners of the Union, enter'd immediately and
Dec. 23. took the oath; having infallibly expected, by Tweddale's mediation, to have been King's Advocate; for it was design'd that the Advocate should have been President. But this project fail'd; for the Advocate having declin'd the employment, by a letter to Lauderdale, his refusal was immediately accepted, and the President's place was bestow'd upon Sir James Dalrymple of Stairs, then one of the Senators; who, by his wit and address, had insinuated himself so well with Lauderdale, whilst he was a Commissioner for the Union, that Lauderdale, who desir'd not to prefer Tweddale's friends, but to make new ones for himself, had contracted a firm friendship with him; which was much heighten'd by the Chancellor, who desir'd not the Advocate's promotion, and by the Earl of Kincardine, who was Stairs' great minion. And really Stairs was a gentleman of excellent parts, of an equal wit, and universal learning; but most considerable for being so free from passions, that most men thought this equality of spirit, a mere hypocrisy in him. This meekness fitted him extremely to be a President; for he thereby receiv'd calmly all men's informations, and by it he was capable to hear, without disorder or confusion, what

the Advocates represented. But that which I admir'd most in him was, that in ten years intimacy, I never heard him speak unkindly of those who had injur'd him.

The other Advocates finding, that Sir Robert Sinclair and some with him were enter'd, they resolv'd to enter; and in a full meeting of the Advocates being call'd, it was debated, that it was fit to crave that the oath should be only temporary, from session to session; hoping that thereby it might run in disuetude. But this had been refus'd formerly, upon pretext that this would multiply oaths; and therefore the greatest part of the Advocates thought fit not to crave that, at this time, whilst the former denial was so recent with the Regulators; and to crave so small a favour, were to insinuate their acquiescence in any thing else; and therefore, since the Chancellor and others had promis'd, that upon a complying with the King in this exigent, they would interpose, and had assurances to prevail, the taking of it was carried by a vote; and that they should enter, and thereby oblige his Majesty in generosity, and the Regulators by their promise, to interpose for them to have this taken off. But though this was carried by the major part, yet some resolv'd, that night, that they would not enter with the major part, the next day; and though, the next day, the major part at their entry declar'd, by a paper given in, what was the sense in which they took these Articles which concerned the Advo-

1671.

Jan. 7.

Jan. 10. cates, yet these few enter'd within a few days, and would use no gloss nor qualification; because, as they pretended, oaths were to be taken in the sense of the giver, and not of the taker. But to this the major part answer'd, that though, where the sense of the imposer is clear, the taker cannot alter it, yet where it was dubious, and the words could very well bear the sense put upon it by the taker, there it was most lawful for the taker to express his sense, and thereby to qualify the oath; especially where he conceal'd not his sense, to be an occasion of swearing ambiguously, and of making mental reservations, but declar'd openly what his sense was: which declaration, the Regulators, by not [contradicting], did allow; nor was this gloss condescended upon, till all the Regulators had declar'd that it was conform to their sense.

This was the first thing which imbitter'd the Advocates against our Statesmen; and as the President well prophesied to the Regulators, this Article, concerning the Advocates' fees, rendered all the other Articles ineffectual. For whereas the Advocates would have been the establishers of these Regulations, by their compliance, they, to render the Articles wherein themselves were concerned ridiculous, did exclaim against the whole; and by their practice, made the greatest part of them burdens, and unpleasant both to the people and to the Lords themselves: and after this, that harmony which us'd to be betwixt Lords and Advocates, was here broke off;

the parties injur'd, (as is usual,) justifying all that they did, or could do, to repay the injury receiv'd. Immediately after the breach betwixt Lauderdale and Tweddale, Lauderdale form'd to himself a new cabal, of which his brother Hatton was the chief; whose interest the Countess of Dyfart promov'd, as far as was possible: and to make the friendship firmer, it was resolv'd and agreed to, that Hatton's son should marry her eldest daughter; and this she agreed to, rather out of odium to Tweddale, who could not but be an enemy of her expected enjoyment of Lauderdale, than out of any kindness to Hatton.

Whilst these projects are upon the wheel, the Countess of Lauderdale dies at Paris, and is buried as Vice-Queen of Scotland, in great state: and thereupon it was much doubted, whether Lauderdale would marry the Countess of Dyfart, to satisfy his fancy, or would choose some young lady, by whom he might expect succession. But she had such an ascendant over his affections, that neither her age, nor his affairs, nor yet the clamour of his friends and the people, more urgent than both these, could divert him from marrying her, within six weeks after his Lady's decease; which confirm'd much the former suspicions, that the world entertain'd of their deportment: and Sir Robert Murray having entreated him to shun this, he thereby incurr'd both their displeasures, and Lauderdale did, in an instant, turn from

being a friend, to be his mortal enemy: so much is friendship a weaker passion than amours are, and so foolish a thing it is, for friends to interpose betwixt a man and his mistress. And though it was alleg'd by her friends, that she was then but forty-five years of age, and so might have her children, yet this was no motive of his, nor was it founded upon any measure of probability; but in this he really yielded to his gratitude, she having formerly sav'd his life, by her mediation with the Ufurper. Nor was her wit less charming, than the beauty of other women; nor had the extraordinary beauty she possess'd, whilst she was young, ceded to the age at which she was then arriv'd.

Feb. 17. There was, upon their marriage day, feasts and entertainments made here, in the houses of all their friends; and the Castle shot as many guns as at his Majesty's birth-day. And now Hatton was courted by all, as our favorite; and immediately thereafter, was nam'd Thesaurer depute, by a transaction betwixt his brother and the Lord Bellenden, formerly Thesaurer depute; who, wearied out by age, and having lost the absolute command he formerly had, because of the new establishment of the Exchequer, demitted in his favors.

The Earl of Lauderdale was now the only favorite, supported by his Majesty's favour, the French interest; but the chief reason of his greatness did, as some allege, proceed from the assistance he gave, of establishing an absolute Monarchy in England, by the French money and arms: And thereupon Lauderdale is created, Duke of Lauderdale, and Marquess of March.

1672.
May 2.

The Duke of Lauderdale, whether desirous to lay open his own greatness in the eyes of the people, or to gratify his new Duchess, who was desirous to be admir'd in Scotland, did come down with a new Commission, to hold the third session of his Parliament: At the opening of which, he in his speech assur'd the members, that his Majesty design'd to seek no subsidy from them; which assurance made this voyage more welcome than otherwise it would have been: And thereupon the Parliament return'd his Majesty their hearty thanks, and approv'd the war with Holland, with the ordinary tender of their lives and fortunes, for his Majesty's service, towards the prosecution of it.

June 12.

At the opening of this Parliament, the Duchess of Lauderdale caus'd place some chairs, for herself and some ladies

who were of her train, and from these, in great state, she heard her husband's speech; a practice so new and extraordinary, that it raised the indignation of the people very much against her; they hating to find that aspir'd to by her, which none of our Queens had ever attempted. [*This set them a work to inquire into her origin and faults, and to rail against the lowness of the one, and the suspicions of the other; and thus she obscur'd that fame for which she was hunting.*] And this malice grew daily against her, by reason of her too much meddling in all private affairs; such as were wrong'd, crying out that we had two Commissioners.

The Parliament did, according to its ordinary method, begin with laws in favours of the Church, making field conventicles, death: And lest that the schism should be perpetuated, by new ordination of young ministers, they declar'd all such as did ordain, being depos'd, or as were ordain'd by such as were depos'd, to be punishable by death: and where it was objected to the Presbyterians, that the admission of ministers, *ad ministerium vagum*, (that is to say, without respect to a fixt place or congregation,) was against the Acts of their own Assemblies, and the custom of the Protestant Churches; they answer'd, that though it was not allow'd in *ecclesia pacata*, yet it was necessary in *ecclesia turbata*; for else the Church behov'd to fail, which was a greater evil than any that could follow upon such extraordinary ordinations.

In this Parliament, the nobility did complain of the great expenses that enſu'd upon Comprifers their coming in *pari paſſu*, if they did comprife within year and day of the firſt Comprifing; for all the creditors being deſirous to have this privilege, did all comprife, if one compris'd: to prevent which, after many ineffectual overtures, the lawyers preſented a new form of Adjudications, whereby it ſhould be lawful to the Lords to adjudge to the creditor any part of his debtor's eſtate, anſwering in rent to 8 *per cent.* of their principal ſum, and redeemable within a year only. The Lords of Articles allow'd the overture; but, in place of one year's reverſion, they allowed five, from the date of the decree of Adjudication, which was in effect to grant a reverſion for ſeven years: and whereas the overture bore, that Comprifings ſhould take place in the Highlands, that being the only mean to produce payment there, was rejected by Argyll's moyen; and they allowed Adjudication only for all ſums, even below a thouſand pounds, though the overture propos'd that it ſhould be lawful to comprife for ſuch ſums; becauſe widows and poor people could not take a proportional part of the debtor's lands, for ſuch ſmall ſums. The Burghs, whoſe great intereſt it was to oppoſe this Act, were animated againſt it by Sir Andrew Ramſay, who poſſeſs'd the eſtate of Wauchton by Comprifings; and therefore ſome lawyers were ordain'd to fit in the Convention of Burghs, to inform them of the reaſonableneſs of this overture; by

which means, many of that state were induc'd to consent that it should pass in an Act. And thus this Act was pass'd in Parliament, after much debate; but the lawyers, who had first contriv'd and propos'd it, finding the Act so unlike their overture, they exclaim'd against it so violently, that few or none adjudg'd for many years: and the President's enemies took advantage of this Act, (in which he had only comply'd,) to rent his reputation; and though he had comply'd to please the lawyers who contriv'd it, viz. Sir Peter Wedderburn, Sir George Lockhart, Sir Robert Sinclair, Sir John Cunninghame, and Sir George Mackenzie; yet even some of these transferr'd their own guilt upon him.

The Commissioner having in his speech told the Parliament, that he was instructed to take away the Summer Session, most of all the members press'd that it should be taken away, and a month or two should be added to the Winter Session, in place of it. This instruction had been propos'd and procur'd by the Earl of Kincardine, who did officiate as Secretary in absence of Lauderdale; but though the Commissioner at first inclin'd to it, at the desire of the nobility, yet his brother and others assur'd him, it would ruin the interest of the three Lothians; and thereupon he chang'd his inclinations, his interest prevailing over their importunity: But, to gratify them, he condescended to hear the expediency of this overture debated, *pro & con*, in the Exchequer

chamber, by five of a fide; in obedience to which desire, such as were against the Summer Sefſion choos'd the Chancellor, Duke Hamilton, the Earl of Dundonald, the Prefident of the Sefſion, and Sir George Mackenzie; and thoſe who were for it choos'd the Earl of Tweddale, the Lord Hatton, the Provost of Edinburgh, the Lord Gosfoord, and Sir Robert Sinclair: who being conven'd, and the Commiſſioner fitting as Prefes, it was represented, "that the Summer Sefſion was a great hinderance to the policy, and to the country affairs of the lieges, as well as to their pleaſure; for before men could ſettle at home, after the Winter Sefſion, they were call'd again to the Summer Sefſion, ſo that their projects and deſigns were interrupted and ruin'd, and the months of June and July, which were the only pleaſant months, and the only months wherein gardens and land could be improv'd, were ſpent in the moſt unwholeſome and unpleaſant town of Scotland. Nor could it be deny'd but that, by having two Sefſions, the people were put to a double expence in travelling to Edinburgh; and when they came in June, the half of the Sefſion was ſpent before buſineſs were enter'd upon; ſo that, by adding one month to the Winter Sefſion, more buſineſs might be diſpatch'd in five continu'd months, than in fix months, with ſuch interruptions as ordinarily attended the beginnings and endings of Sefſions: and by the continuance of the Sefſion, the lieges would get their proceſſes ended without double consulta-

tions, and twice giving out of their papers: Nor could it be deny'd, that this would cut off much prodigality in filks, and foreign commodities, which were mostly consum'd at the Summer Session."

For the Summer Session, it was represented, "that no nation, which had courts of justice, did interrupt the course of justice for six months together; and that the want of courts for so long time in the kingdom, would render it wild, and make malefactors insolent, and debtors insolvent; which were greater prejudices than any that could be prest upon the other hand. And since the Session was not, in six months, able to expedite their processes that lay before them, it was not to be expected they could dispatch them in five: That five uninterrupted months would weary Judges and Advocates, so as that they would be unfit for business; and that too much of our harvest fell in October, to be fit for a Session month: That all innovations were dangerous, and especially where all the same arguments, now prest, were then obvious; and yet our predecessors had past over these, and us'd a Summer Session for many ages."

These were the arguments us'd in publick; but privately it was urg'd, "that the want of a Summer Session would ruin the North, because their corns were consum'd here in the summer time; and those of the South, because it vented

their lambs and sheep." To which it was answer'd, "that men consum'd more in winter, of all manner of provisions, than in summer; so that neither could these, nor the Lothians, be prejudg'd by the taking away of the Summer Session. Nor should the people want justice, in the mean time; for the Council and Circuit Courts would punish riots and malefactors, and some Lords might meet for a month, and discuss Suspensions." After this debate, the Commissioner declin'd always to have the Summer Session taken away; which made some conjecture, that the town of Edinburgh had prevail'd with the Dukes, in a gentle way, to oppose this design, since it would ruin their house mails, and all their tradesmen: for the vintner would want his customers, and the merchant would miss the wearing of summer stuffs and furniture; that being with us the only season of prodigality. Nor spar'd some to say, that the overture of taking away the Summer Session had never been motion'd, if it had not been to invite the good town to secure their own interest, by that effectual way of intercession. But, after exact enquiry, I found those to be mere calumnies.

Sir Colin Campbell, who serv'd as burghs for Inveraray, finding that this overture was suffer'd to sleep, did again table it in plain Parliament: at which the Commissioner grew so huffy, that, (forgetting it was in his instructions to allow it should be taken away, if the Parliament pleas'd,) he

fwore it should never be taken away, except his Majesty nam'd another Commissioner; and none should carry it, except over his belly. Thus the negative was interpos'd, (to all men's admiration,) not only without an express instruction, as use is, but against an express instruction: but how warrantably, I refer to the reader and to posterity as judges to consider.

In this Parliament also, there was a sumptuary law past, discharging the wearing of silver lace and silk stuffs, upon design to encourage the making of fine stuffs within the kingdom, and to repress the excessive excess us'd in these commodities: but that which was complain'd of was, that the goods already brought in were not allow'd to be worn; which was refus'd left, under the pretext of these, others might be brought in: and yet nine months were allow'd then, for venting and wearing of them; and it was urg'd, that if longer time were granted, the Act would be forgot, before it could be put in execution, as it was in King James's reign, for this same cause.

The Burgh of Stirling had charg'd the unfreemen of Falkirk, to desist from trading, they being but a Burgh of Regality, belonging to the Earl of Callendar; which charge they suspended, and the Suspension having been debated before the Session, the Commissioner was, because of his interest

in Musselburgh, (which is a Burgh of Regality belonging to him,) persuaded to come up to the Session; and the interest of the Lords of Regality having been debated, by Sir Robert Sinclair and Sir George Mackenzie, and that of the Burghs, by Sir George Lockhart and Sir John Cunningham, it was desired by Sir George Mackenzie, that since this debate related to the policy of the kingdom, it was more proper to be considered by the Parliament than by the Session; the Parliament being the proper judges of trade, and conveniences arising to it; and so this being brought in to the Articles, they drew an Act, allowing Burghs of Regality and Barony to export corns, and the manufactures of the kingdoms, and to import iron, timber, and such like commodities as were necessary for labouring of the ground; which Act was accordingly past in Parliament: but because the reasons *pro & con* are fully represented in Sir George Mackenzie's Pleadings, therefore they are here omitted. But by these two Acts, Lauderdale lost the affection of the Burghs Royal, who did formerly depend entirely upon him, as their Agent at Court; which employment he wisely desired, at his Majesty's Restoration, knowing it would secure him that third estate of Parliament.

Albeit his Majesty's letter, and the Commissioner's speech, had secured the Parliament, as they imagined, against any new imposition for this session, yet the Earl of Athol, (at

the Commiffioner's private defire,) did motion in the Articles, that though his Majesty did defire no fubfidy, yet there being a war with Holland, in which this kingdom was engag'd, and by which they might be invaded, and we being unprovided in all neceffaries for our own defence, it was neceffary that there fhould be a fubfidy levied, to lye in readinefs; and the lefs his Majesty crav'd, the more we were oblig'd to give. This overture was feconded by Robert Mill, Provost of Linlithgow, who offer'd a twelve month's cefs; and that flattering *quota* had carried, if the Commiffioner, furpris'd at the profufenefs of the offer, had not held up his five fingers to Athol; who, knowing the fign, retrench'd the firft offer of twelve months cefs, to five months. Many of the nobility and others, were alarmed at this new project, in a time when the country was exhausted of money; the leg dollars having been carried away to Holland, being imprudently cry'd down here to 5s. 6d. and there being no price for victual, cows, or falmon, which could not be vented in time of war: and many of them having met, it was resolv'd that they would oppofe this new cefs; which put the Commiffioner to renew the overture of retention upon the annualrents, by which fuch of the nobility as were in great debt, retain'd more of what was due to their creditors, than they paid to the King: And this overture did fo far prevail, that the nobility, and many of the gentry who were in the fame condition, were brought to condefcend to

the imposition, hoping that this preparative would be of more advantage to them, than any thing they could lose by this subsidy.

When the Act for this subsidy was brought into the Parliament, some oppos'd it, representing "that his Majesty in his letter, and his Commissioner by his speech, having promis'd that no subsidy should be crav'd, it was injustice in the Parliament to lay a burden upon the people, which they were not able to bear; nor was it reason, that they should contribute to a war, by which their kingdom could be no gainer, and by the continuance of which, they could not but be losers: and his Majesty, who knew best the necessities and conditions of the war, had assur'd us, that we should not be burden'd upon that account; that ever since his Majesty's Restoration, we had been still paying out, in subsidies, the little money that was left by the usurpers; and it was fit for the Parliament, once to let the people find, that they might see a Parliament without a new Cess; nor could this Cess signify any thing towards our defence, as to this war; for, if the enemy invaded us not, this was useless, and if they did, it would be insignificant; for nothing less than the cordial concurrence of the whole kingdom, could defend us in that case; and the exacting of this subsidy, would cool their affections so much, that little assistance could be expected from them; and the imposing of such subsidies, had till now

signified nothing, but to drain the people, for enriching courtiers and favourites."

Mr. William Moor, Advocate, and burges of Inverurie, added, that it was fit that the members might be allow'd some time to advertise their constituents, as was the laudable custom of England; whereupon the Commissioner, chaff'd by the former speeches, resolving to vent his passion upon the weakest, and hoping here to terrify others, desir'd that he might be sent to the bar, for offering to impose the customs of England upon the Parliament of Scotland; which discourse was deliver'd with so much passion, that all kept silence, till the President of the Session, desirous to take off the young gentleman, motion'd that he might be sent to prison, till the Parliament might maturely consider his guilt; but that it was not fit at present to interrupt the granting of this subsidy, by such an incident trial; which overture was accepted for that time; but the next day, though many offer'd to appear for him, amongst whom Sir George Mackenzie was one, yet he choos'd rather to give in a submission to the Commissioner and Parliament, and was accordingly, to the great reproach of the House, brought to the bar, and then to his knees, but without any vote of Parliament; so that this can never be alleg'd as any precedent for the future. And here did many begin to repent their former pusillanimous compliance, and to accuse themselves of having be-

tray'd the privileges of their native country, and of having expos'd themselves to the scorn of their neighbours; [*nor can the Commissioner be justified in this,*] for it is most allowable and ordinary for us, to cite the practice of our neighbours; nor could this have been term'd, an imposing upon the Parliament of Scotland, English customs, and it cannot be instanc'd, that any member was ever punish't for the like overture. It is also very observable, that here a member was punish't shamefully, without a vote; so that he was in effect punish't in Parliament, without the consent or concurrence of Parliament. But, I believe, all this proceeded from the Commissioner not hearing well at first, what the gentleman spoke; and from his being unwilling to hazard himself in so ticklish a debate.

The Parliament proceeded to the reading of the Act, and most seem'd to agree to the subsidy; the nobility being intent upon the retention, and the rest, to oppose it, forgot their main; either party hoping, by their compliance, to gain the Commissioner to their side. That personal estates should be cess'd, as well as real estates, was prest upon these considerations. "1. Because all taxations, and especially this, was granted for the advantage of all the lieges equally; and therefore it was just that all should contribute to carry on the common concern. 2. It was absurd that poor heritors, who could scarce maintain their own families, should be

made liable to all impositions; and such as had opulent estates in money, should pass free. 3. This did abate very much the price of land in Scotland; for the people found that there was much advantage, by having their stocks in money freed from all publick impositions; whereas the land rent was exhausted by such great and constant taxes. 4. This did ruin all trade and commerce; for all men employed their money upon usury, finding that their annualrents were free from impositions; whereas, if annualrents were made liable, men would rather trade with their money, than lay it out upon annual rent, that was to pay publick burdens: nor could it be deny'd but that, in all other nations, personal estates bore equal share with the real; and though this had not been practis'd formerly here, yet that did rather conclude, that personal estates might now be cess'd, because they were so long free: and they had been freed at first, either because money was very scarce of old in Scotland, or else because all our impositions were lay'd on by way of Taxation, which could not reach money, being laid on according to the pound-land." [*Yet these reasons, not being countenanc'd by the Commissioner, who design'd at that time to insinuate himself with the Lawyers, with the Burghs, and the body of the people, did not prevail; albeit much prest by the Duke of Hamiltoun and others, and albeit very*] few did oppose the overture, except Sir George Mackenzie; to whom all possible opposition was recommended by a meeting of Advo-

cates; and who, at their desire, first drew a strong faction amongst the Burghs, whose interest lies most in annualrents; and thereafter, when the overture was brought in from the Articles, argu'd against it upon these reasons. "1. Because money being more scarce than formerly, was more to be cherisht and privileg'd; and since it paid no part of the taxations, when the annualrents were at 10 *per cent.* it was not just nor fit that they should be now burden'd. 2. His Majesty had, *in verbo principis*, promis'd when the annualrents were brought to 6 *per cent.* that, in respect of that deduction, they should never be burden'd; and though Parliaments might abrogate laws, yet they could not recal the publick faith. 3. That personal estates were subject to many more inconveniencies than real estates were; for many bankrupts defrauded the creditor in his stock, but the stock of land remain'd still with the master; and that the creditor had lately much advantage, by many other Acts, such as the 'Act of debtor and creditor,' wherein the payment of sums were suspended; and by another Act, eight years' annualrents were deduc'd, to all such as were forfeited for the King; and several noblemen were restor'd to their estates, by donatives from the King, upon forfeitures and recognitions; whereby poor creditors had suffer'd far more than heritors had. 4. That when the creditor lent his money, he paction'd for 6 *per cent.* without any defalcation; and it were dishonourable and unjust, that the debtors should now

conspire to break their faith; but if any such law were to be made, all sums already owing should be first paid." Notwithstanding of these considerations, the Parliament, by a vote, burden'd personal estates.

In this Parliament, there was an Act past to ratify the Regulations, albeit after a full debate, amongst the Regulators, Duke Hamiltoun, the President, and many others oppos'd it: but the Duke of Lauderdale being perswaded by his brother Hatton, that the restricting Advocates' fees, and the shortening processes, were very pleasant Acts to the people, he brought it in to the Articles, and from them to the Parliament; where it was argu'd, that these Regulations were not one law, but a bunch of laws, and therefore every Act was to be read and voted apart; for many would vote for one article, who would not assent to others: which opinion prevail'd so far, that every article was read and spoke to apart, but all were voted together, at last, in a very strange and extraordinary manner: and after reading of that article which concern'd the Advocates, Sir George Mackenzie spoke thus,

"Other laws, (my Lord Chancellor,) have like moderate rain, refresh'd the ground upon which it fell gently; but thir Regulations have, like an inundation, pull'd up by the roots every thing which stood in their way. Here is a volume of

laws, to be past in one Act; and such laws as, though they concern the forms of our procedure, and so can only be known to such as have experience, yet were invented and authoriz'd by noblemen, whose birth and education cannot allow them to understand what was to be introduc'd or abrogated. And since foldiers, salt or coal masters, would think it impudence in such as are not bred up in their profession, to prescribe orders for such as serve under it; it is strange why any, save learn'd lawyers, should adventure upon a task, wherein even reason cannot discover what is fit. Our old customs, here abrogated, were authoriz'd by the Lords of Session, whom breeding enabl'd, and whom only the law of our nation has intrusted with the regulation of forms. They were grown strong by age and exercise, and were adapted to our other customs, and to the analogy of our law, by the exact care both of Lords and Advocates: so that now to change them for any laws, seems dangerous; but to change for laws so made, and which experience has condemn'd, before the Parliament has made them laws, seems yet more difficult: and our proverb, 'the ill ken'd is better than the good unken'd,' holds in nothing so much as laws.

"I confess, the old Romans pleaded without money; but their pleading for the people was the only way of gaining their favour, and by their favour, the chief governments of the state; and thus the empire of the world was the salary

of pleading. None did master that people, who could not lead them by the ears. Scipio, Cato, and Pompey, were pleaders; and Cæsar did not quit the bar, but because he lov'd to be the first soldier, since he could not be the first orator: only Marius, the worst of all the great Romans, did rise without pleading. But thereafter, the world perceiving that greatness was to be gain'd, in thir vicious ages, by favour rather than merit; and that none could understand law, (which wit and long experience had subtiliz'd to a great exactness,) but such as spent their money and time upon it, and did for it neglect all other employments; they appointed Advocates, not salaries, but honoraries, because no money could be the price of that noble protection, which the wit and learning of Advocates gave. And though some countries have stinted those honoraries to a definite sum, yet that modification was only to take place where the giver had no full liberty to give, as in the case of a tutor for his pupil, or a factor for his constituent; or where nothing was given, and the law was forc'd to supply the ingratitude of the client. But that a man who has an unlimited power of his own money, should be limited in bestowing of it, according to the various cases that may occur, seems both against the nature of property, and principles of prudence: and are there not many cases, wherein the extraordinary pains of an Advocate, or the happiness of his success, may exceed in one case more than another, than one salary exceeds another?

And who can deny, but that the attendance upon a 'Compt and Reckoning,' deserves far more than the answering a single query? And since Advocates never refuse to answer twenty several cases at one time, and for one salary, and very oft for none at all, when the client is absent or indigent, why ought Advocates to be forc'd not to take, when clients cannot be forc'd to give? And strangers, reading this Act, must conclude us an unworthy nation, when they find that the people want wit to regulate their expence, and the Advocates want virtue to bound their avarice.

"I confess that the salaries were not of old so great as now; but since men must live by their employment, it would be likewise considered, that these have not risen with a full proportion with the prices of other things, upon which Advocates must live; and one fee then, was more than six now: and it's well known, that those pensions, which are now almost in desuetude, were then very great and frequent, and that no man consulted then the meanest query, without gratifying his Advocate; whereas now, there is nothing more ordinary than for one Advocate to resolve many doubts, and appear very frequently at the bar, for one and the same salary.

"It were then my opinion, rather as a member of Parliament than an Advocate, that this attempt, and their own

generosity, may be allow'd to supply a law at this time; for by it, the people will know what they ought to give; and if there be any avaricious Advocates, this attempt will let them see what you can do. Whereas, if you proceed to restrain them here, they will but like waters damm'd up in one place, overflow in another with greater prejudice; and those who have the wit to elude laws for you, will know how to evade them, where either their own honour or their avarice prompts them to it: And for my part, I have spoke so much against this Article, rather because my fame, than because my interest, is concern'd.

“ I cannot but remember your Lordship, that the securing this Article by an oath, may be the occasion of more perjury than advantage; for many Advocates, because of the mysteriousness of the Article, or by inadvertence, or the multitude of affairs; or clients, out of too great a desire to oblige their Advocates, may fall into this snare, and so ruin both their soul and their reputation: And at best, it will but tie such as fear an oath, and enrich such as contemn it; and thus you will seem more careful of the peoples' money, than of their souls.”

The Earl of Bramford and Forth having been restored against his forfeiture by way of justice, his estate did in law fall to his daughter, Lady Jean, and consequently to her husband the Lord Forester's creditors; but yet the Parliament did, by an Act, secure it to their son, as the Earl of Forth's grandchild, to perpetuate his memory; and they also rescinded a contract past betwixt the Lord Forester and the Countess of Forth: by which two Acts the people were generally alarm'd, finding their property unsecured, in the preparative; for if a noblemen, or any leading member of Parliament, was desirous to be loos'd from his transactions, he might expect to be thus freed. "This were, (said they,) to make Parliaments, the Session; to make ordinary burghesses, supreme judges; and to allow Parliaments an absolute power over our estates." After this Act, the Parliament Sept. 11. adjourned till [the 11th of June next.]

After the Commissioner's return to court, he employed his brother the Lord Hatton as his chief trustee; a person more oblig'd to fortune than to fame, being as much injur'd by the one, as rais'd by the other. The Earl of Tweddale's friends were the chief who inform'd fame against him; designing thereby to hinder his being employed by his brother, lest upon near acquaintance he might have warm'd into a kindness, and thereafter have preferr'd him in the Tailzie. That which animated the people most against him was, that

he was said to have adulterated and lessen'd our coin; which report was the sooner believ'd by all, that the subject was understood by few or none. But that which animated the people most against him was, that he having obtain'd a gift of *ultimus hæres*, from his Majesty, of the estate of Dudhope or Dundee, fallen in his Majesty's hand by the death of the late Earl of Dundee, he did use it somewhat rigidly, and obtained such decreets before the Session, that they were believ'd to be innovations of our law: And so the people did not only cry out against him, but even against the Session, which had favour'd him, and whose justice they always thereafter suspected, as led by him. Nor was this the only reason why the Session was then severely censured by the people; for Lauderdale by promoting four [*ignorant persons*,] who had not been bred as lawyers, without interruption, and in two years time, to be judges in it, viz. Hatton, Sir Andrew Ramfay, Mr. Robert Prestoun, and Pittrichie, he render'd thereby the Session the object of all men's contempt. And the Advocates being disobliged by the Regulations, did endeavour as far as in them lay, to discover to the people the errors of those who had [*opprest*] oppos'd them; and they being now become numerous, and most of them being idle, though men of excellent parts, wanting rather clients than wit and learning, that society became the only distributors of fame, and in effect the fittest instruments for all alterations: For such as were eminent did, by their authority,

and such as were idle, by well contriv'd and witty raillery, make what impressions they pleas'd upon the people. Nor did any suffer so much as the Lord Stairs, President of the Session; who, because of his great affection to Lauderdale, and his compliance with Hatton, suffer'd severely, though formerly he had been admired for his sweet temper and strong parts: And by him our countrymen may learn, that such as would be esteemed excellent judges, must live abstracted from the Court; and I have heard the President himself assert, that no judge should be either member of Council or Exchequer, for these Courts did learn men to be less exact justiciars than was requisite. Such also as were disappointed of the President's chair by his promotion, or did expect it by the hopes of his being turn'd out, did blow up every little spark into a flame; but none blasted so much his reputation as the Register, who from his intimate friend, became his mortal enemy, because his daughter in law had preferr'd the President's son to his for a husband.

A design had been driven on, for a long time, to get all the Scottish salt farm'd by his Majesty. The Exchequer had proceeded so far in it as to transact with all the salt masters; so that no salt was bought but from his Majesty's servants, and all foreign salt was absolutely discharged, save for fishes only. The reason pretended for this was, because it was unjust that we should bestow our money upon foreigners,

when our own manufacture might serve us; and it was fitter to cherish our own manufacture, whereby 20,000 people were kept at work. Nor could the coal works, which was one of the chief commodities, be kept up, except this encouragement were given to the salt; seeing the gain was by the small coal, that could not otherwise be vented except in making salt, and this was the chief encouragement which the coalmasters had; and except his Majesty had the salt in his own hand, England would not allow us to sell our salt there. The salt being thus settled upon his Majesty, it was found that the country was not well served by publick servants, who either made it not their business at all, or else made it only their business for their private gain: Therefore the Earl of Kincardine farm'd it from his Majesty, at a considerable rate; whereupon the country was immediately alarm'd by his and Lauderdale's enemies, and the former just complaints had now a way open'd to them, by a letter which was writ to his Majesty by the Exchequer, representing the inconveniencies the people suffer'd.

It cannot be deny'd but that complaints throng'd in daily; some wanting salt altogether, as in Galloway, the West, and all the Highlands, where our Scottish salt could not be carried, and so were forced to use salt water, by which many of

them died as of a plague; others being forc'd to buy at intolerable rates, as sixteen shillings sterling the boll, though they had it formerly for four. It was likewise represented that it did melt in the carriage, and it could not preserve beef, hides, &c., for the hides preserv'd by it did all fall out in holes; which, with many other inconveniencies, were heightened by its being deliver'd over into the hands of a private person: For whilst it was in his Majesty's hands, they expected still some redress from the Exchequer, because the members there were equally concern'd with themselves; and no single person being to expect advantage, it was easy to bring them to reason in a publick concern. It is also very observable, that the subjects are less griev'd at the payment of what goes in to the publick treasure, than of what goes to the advantage of any private party; for the one seems to remain still in some sense with the givers, since it is given to their Prince from whom they expect protection, and who defends them by his treasure; whereas the other breeds in them envy and malice against such as are enrich'd by their spoils.

It was declared by Rothes' Session of Parliament, that his Majesty might impose upon foreign commodities as much custom as he pleas'd, or might discharge the importation of them if he thought fit; by virtue of which Act, brandy was discharg'd to be imported, and the seizures of it were gifted

to the Lord Elphinstoun, son in law to Hatton; who extended so far his gift, that he allowed the importation of it, by transacting with the importers for licences to bring it in, and granted *transires* as openly as the King's customers did, so that in effect he had his own Exchequer; and there was so much brandy imported that the price of our barley fell considerably, the strong waters, which formerly consumed a great part of it, being no more used; and his Majesty's customs and excise, arising from Spanish wines, were considerably diminished, brandy being now come to be drunk every where in place of sack; which did irritate the people to a great height, the Lord Elphinstoun being a person who was too young, and as some said, too insignificant, to [*deserve well*] receive so much of his country; and it was insupportable to see [*Hatton's daughter thrive at the publick charge of the kingdom, and*] the laws of the kingdom, which were introduced for a publick good, deliver'd over to the arbitrariness of a private person, who not only render'd them ineffectual, but in effect inverted them to an use contrary to what was design'd.

Upon pretext of the same Act likewise, Sir John Nicolson of Nicolson got great imposition upon tobacco; and though it was pretended that tobacco was an unnecessary and expensive drug, and that it was advantageous for the nation to have it discharg'd, and much more to have it burden'd, yet

this was a most fallacious ground; for tobacco was become so necessary, that custom had made it as necessary as nature had made meat or drink; and consequently, this imposition was as grievous as if bread or ale had been burden'd. Nor was the expence of the kingdom less'n'd, but rather heighten'd, by this imposition; for as no man would lose the pleasure he had by tobacco for so small an addition, so more tobacco would now be imported than formerly, by reason of the licences which would be granted, and by which the merchants, who had that privilege, would be tempted to bring in more of it than ever. The pretext for granting this gift was, that many of the nobility were engag'd to Sir William Dick, for money lent by him at the beginning of the last Rebellion; to repay which, and for their security, this gift was granted to Sir John his grandchild, who was oblig'd to deliver up their bonds. But this reason was so far from satisfying the people, that it vex'd them yet more to see themselves burden'd to pay money, which was lent to carry on a Rebellion in which this kingdom suffer'd so very much; nor were these noblemen to be reliev'd of a debt which they had contracted with so much guilt. But that which troubled the people most, in all these gifts, was the apprehensions they had of the consequences that might follow from thir preparatives; for it was daily expected that, upon the pretext of this Act, there would be gifts procur'd upon iron, pitch, tar, and all other commodities, and that his Ma-

jefty might burden some and not others, and so Parliaments would be unnecessary; for his Majesty might by this Act impose as much as the people could bear, since foreign commodities were absolutely necessary to this kingdom, which could not provide itself. And their jealousies were in this daily rais'd by the many monopolies daily granted; as of a peck upon the boll, to Seaton of Touch; the fines of maltmen, to Colonel Borthwick; and of unlawful and clandestine marriages, to one Rennet, the Commissioner's own servant: nor was there any thing more ordinary, than for such as were the Commissioner's cousins, friends, or allies, to enquire what gifts could be granted; never doubting to obtain them if once nam'd.

Sir Andrew Ramsay had, by obtaining 5000 *lib.* sterling to the Duke of Lauderdale for the Citadel of Leith, and other 5000 *lib.* to him for the new imposition granted to the town, by the King, upon ale and wine, insinuated himself very far into the favour of his Grace; and by his favour had for ten successive years continu'd himself Provost of Edinburgh, and consequently Preses of the Burghs; by which, and by thus having the first vote of Parliament, he was very serviceable to Lauderdale; who in requital of that favor, obtain'd 200 *lib.* sterling *per annum* settl'd upon the Provost of Edinburgh, and caused the King give him 4000 *lib.* sterling for his comprising of the Bass, a rock barren and

useless: [*Thus they were kind to one another upon his Majesty's expences.*] In this office of Provost he had govern'd most tyrannically for ten years, applying the Common Good to himself and friends, and inventing new though unnecessary employments within the town, to oblige those who depended upon him. But at last the citizens, weary of this yoke, resolv'd to turn him out at Michaelmas 1672; and had prevail'd, if two of their number, hoping that the vote might have been carry'd without them, had not voted "*non liquet*," by which Sir Andrew carried the major part; whereupon they were forc'd to intent a Reduction of his election, the event of which was, that the case being submitted to the Chancellor and President, they ordain'd that there should be an Act pass'd in the Council of Edinburgh, declaring that none could be Provost for longer space than two years *successive*; and this Act to be sworn by the present Council, and transmitted by them to the next Council, and so from Council to Council at their first election. This Act Sir Andrew subscrib'd, but prevail'd with the Council to refuse it; till at last the Lords, finding his trinquetting in this affair, threaten'd to decide against the town, and this forc'd all to subscribe. But the Deacon Convener having given in a bill, declaring that this was an overturning of their privilege, he was imprison'd, and declar'd incapable of being elected for three years; to revenge which, Sir Andrew caus'd the Archbishop of St. Andrews, his great patron, to com-

plain to the Secret Council that the Declaration had not been put to the Council of Edinburgh, and therefore obtained that it should be of new taken; by which means he hop'd to put off two Baillies who oppos'd him: but he mis'd his aim, for they were induc'd to pass over this scruple for a publick good.

During this plea, Sir Andrew, to engage the Court in this affair, had writ up a letter signifying that the people had rais'd a tumult against their Magistrates; and in answer to this letter, the Privy Council were commanded to enquire into this tumult and the authors of it: Which enquiry was subcommitted to such of the Council as favour'd Sir Andrew; and these examin'd very many, without receiving objections against the witnesses or interrogatories, from the persons accus'd, though in law no witnesses should be received to depone upon what may prove criminal, except in presence of the defender. And whereas it was pretended that, if any process were to be intended, the witnesses behov'd to be led in presence of the parties, this shift was most ridiculous; for if the witnesses be once engag'd in what they depone at thir private examinations, it is against reason to believe that they will retract; and the want of interrogatories from the parties delated, cuts them off from these defences which would otherwise secure them; a clear instance whereof, amongst many others, fell out in this case; for it was de-

Oct. 5.

Nov. 5.

pon'd, that some persons stood upon other men's shoulders, and lookt in at the windows of the Town Council, which was made a clear evidence of a tumult; whereas, if the parties accus'd had been allowed to give in their interrogatories, they would have expressly proven that this was only done by Sir Andrew's own servants who did bear his livery; and if objections had been receiv'd, these who were led had been prov'd to have been the chief accusers, by whose depositions the innocentest men might have been oppress'd, and their reputations might have been blotted in the esteem of their Prince, though no process had been intended; which proves clearly, that it is not sufficient that objections be reserv'd till a process be intended. It was likewise objected, that in such inquisitions no private person's name should have been condescended upon, but the only subject matter of such inquisitions should have been, if there was such a tumult. But after much debate, it was allow'd that such as had been condescended upon as authors of the tumult, should lead witnesses in their own defence; whereupon they adduc'd two of Sir Andrew's own Bailzies, who confest that there was no tumult, and that when they had refus'd to subscribe the letter bearing that there was a tumult, since they knew the information to be false, Sir Andrew forc'd them to subscribe, telling them that he who had rais'd the Devil could lay him again.

1673. Sir Andrew designing to secure the ensuing election, procured a letter from his Majesty, deposing Mr. James Rothead clerk of Edinburgh, (and whose influence he knew to be very great amongst the electors); bearing that his Majesty had found, by the foresaid depositions, that Mr. Rothead had been accessary to the raising of the said tumult. And thus Mr. Rothead was judg'd, without being cited, or he allow'd to propone his defences: but this [*villainy*] trick prospered, for Sir Andrew after this was so dreaded that none durst oppose him.

Sept. 30. At the diet for election, the citizens gave in a bill to the Secret Council, craving assessors to be sent from them to the election, for balancing that tyranny which Sir Andrew us'd against those who oppos'd him; and accordingly the Earls of Linlithgow and Kincardine were sent; but before they came, Sir Andrew had caus'd call the rolls, and had fill'd the places of such as had gone to the Privy Council. But these Lords ordain'd the parties so debarr'd to be repon'd; and yet Sir Andrew, having the shadow of his Majesty's favour thus stretch over him, was of new elected. And in this posture were affairs when Lauderdale, to shun the resentments of the English Parliament, prevail'd with his Majesty

Oct. 16. to send him his Commissioner to it in October 1673.

.....

The Lord Hatton having scrupl'd, as Thesaurer depute, to allow the Duke of Hamiltoun's Accompts as to the Taxation 1633, and the Earl of Tweddale being discontented, because the Duke of Lauderdale had, by breaking the former entail of his estate, prefer'd Hatton to his children; they two did enter into a new friendship, founded rather upon their common hatred to Lauderdale, than any personal kindness to one another. Hamiltoun drew in the Earl of Queensberry his brother in law, and Queensberry engag'd his friend the Earl of Rothes, then Chancellor; who being disoblig'd by taking from him the Thesaurer's staff, was at least content to see Lauderdale lessen'd, hoping likewise that the supreme direction of affairs would, by the other's fall, be devolv'd upon him as the next minister of state. This junto was much encourag'd by the hopes they had of Sir William Lockhart's interest with the King, he being then his Majesty's Ambassador for France; and by the Advocates, who were highly dissatisfied with Lauderdale, for regulating their fees, and subjecting them to those taxations from which they were formerly exeem'd by express statutes. Others seeing so many engag'd, did either upon hopes of preferment, or from fear of being smother'd under the ruins of so great a man, join in the common noise that was rais'd against him.

Lauderdale, desirous to shun the Parliament of England, got his Commission renew'd to come to Scotland, as Commissioner for a new Session of Parliament; and whilst he was yet at Lethington, the Burghs did meet, as they are allow'd to do before the down fitting of our Parliaments, for considering what is fit to be propos'd to the Parliament, in order to trade; in which meeting also they use to examine their own commissions to Parliament, though this be not allowable, since the inquiry into such elections belongs only to Parliaments: albeit they pretend that they having private statutes made by common consent for regulating these elections, so as that none may be elected but such as are truly trading burghesses, they may fine such as elect contrary to these Acts. In this meeting, Sir George Mackenzie, who was very acceptable to them, caus'd move that Mr. James Rothead might sit as their clerk; for though he was discharg'd by his Majesty's letter from being clerk of Edinburgh, yet he continued still as clerk to the Burghs: At which motion, Sir Andrew Ramsay, finding it was like to prevail, storm'd so highly that he deserted the meeting; whereupon the Burghs having sent some of their number to represent the case to Lauderdale, they were very ill us'd, at Sir Andrew's persuasion, (who persuaded Lauderdale that to yield to this would encourage the new cabal to pursue stiffly in other cases): and thereupon that state did generally enter into the confederacy, and this did

much heighten the courage and add to the numbers of Lauderdale's enemies.

The night before the fitting of the Parliament, the chief Nov. 11.
noblemen and others of the Party (for so we shall term hereafter such as join'd against Lauderdale,) did meet; and after they had assur'd one another, and had warm'd themselves into a passion against him, they resolv'd that, when it should be propos'd that an answer should be drawn to the King's letter, all the chief of the Party should desire that they might first consider their own grievances; to the end they might in that letter acquaint his Majesty with the present state of the kingdom, which they knew could not be done at another time, because the King's Commissioner would certainly interpose his negative: and by this early opposition they resolv'd to fix their friends, and let the world see that they were considerable, which could best appear by a multitude of speakers; guessing rightly that Lauderdale's friends being surpris'd

“ CHARLES R.

“ My Lords and Gentlemen; At the opening of the last Session of this Parliament we did acquaint you how, and

upon what grounds, we were engaged in a very just and necessary war against the States General of the United Provinces, to the end you might consider your own security as well as our honor and interest, and that you might provide fitting remedies against all accidents that might befall that kingdom through this occasion; and you did then cheerfully raise such a sum as might probably provide against any sudden invasion or intestine commotion; for which we return you our hearty thanks: And seeing the war doth still continue, we have thought fit to send the Duke of Lauderdale our Commissioner, for keeping this Session of Parliament at the day to which we did many months ago adjourn it: He will acquaint you how we have, by our Ambassadors at Cologne, used all possible endeavours for attaining a just and honourable peace, and what hath been the insolence and stubbornness of our enemies, who have never yet made any step towards peace; so that we are necessitate to continue the war for our own honor, the maintenance of our just rights, and the protection of all our subjects; wherein we nothing doubt the hearty concurrence of you, and of all our kingdoms. But one of the principal reasons of keeping this Session of Parliament is, to the end effectual courses may be laid down for curbing and punishing the insolent field conventicles, and other seditious practices, which have, since your last Session, too much abounded. You are our witnesses what indulgencies we have given, and with what lenity we

have used such dissenters as would be peaceable, and how much our favors have been abused. You have made many good laws, but still they have failed in the execution, against the contemners of the law. We must now therefore, once for all, lay down such solid and effectual courses, as the whole kingdom may see that we and you are both in earnest, and that if fairness will not, force must compel the refractory to be peaceable and obey the law.

“ We have had frequent experience of your affection to our service upon several occasions, and therefore we are confident you will eminently do your duty in this, which doth so much concern our authority and your own peace and quietness. We leave the ways and means to your own wisdom; and we do expect that you will lay down such solid grounds, and take such effectual ways as may put an end to those disorders, and evidence to the world that our ancient kingdom of Scotland is at quiet and united to us. We have instructed our Commissioner fully in this, and all things relating to our service and your advantage; and he can well inform you of our constant affection to, and care in all the concerns of that our kingdom; which consideration, at this time, hath made us dispense with him here, when his service was so useful to us. We need not again repeat that which we have so often said of his great sufferings for us, and great services that he hath for many years done to us; and there-

fore you fhall give him entire truft, as we have hitherto done in all things, knowing we could not have pitched upon any that is more faithful to our fervice, or that is a greater lover of your good and tranquillity, which maketh us not doubt a happy refult to this Seflion; and fo we bid you heartily farewell. Given at our Court at Whitehall, the 16th day of October 1673, and of our reign the 25th year.

“ By his Majefty’s command,

“ LAUDERDALE.”

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Nov. 12. After reading of this letter, it was propos’d that a Committee fhould be nam’d for bringing in an answer to it; whereupon the Duke of Hamiltoun, and after him with the fame breath twenty moe, defir’d that their grievances might be firft confider’d: Which did aftonish fo Lauderdale’s friends, that only the Earl of Kincardine debated, “ that this delay was moft derogatory to that high respect we owed to the King; and the motion for a Committee of Grievances, was an innovation of all our old customs, which had never allowed a Committee of Grievances; the legal way of motioning any new thing to our Parliaments being by the Lords of Articles.” To which it was reply’d, “ that by our old constitutions we had *Dominos ad Querelas*, as well as *Dominos ad Articulos*; and lately in Middletoun’s Parlia-

ment, we had Lords of Bills as well as Lords of Articles; the Lords of the Bills being necessary for offering what grievances are to be redress'd in favours of the people, as the Lords of Articles are for preparing what is to be offer'd to the Parliament by the King; and though the Parliament us'd to name a Committee call'd Lords of Articles, yet they did not denude themselves, by that nomination, of a power of remitting other cases to other Committees, nor debar themselves from considering, in the first instance, what they should think fit." To which it was answer'd, "that the word 'grievances' was unknown in our law, nor were *Domini ad Querelas*, Committees for Grievances, but only Committees appointed for hearing private cases, when these were too many to be heard by the Articles, who were to consider the greater affairs that were to be treated in Parliament; and albeit in Middleton's Parliament, because of the great number of private cases emerging by the late Rebellion, such a Committee was thought necessary, yet this Parliament had in all its Sessions refused to name any such Committee, lest they should thereby introduce novelties that might prove dangerous. To reconcile or rather to shun these debates, it was propos'd and condescended to, that so many of either side might be named, to meet and to consider what was desir'd for the good of the country, and what was the fittest way for redressing what should be so propos'd; and accordingly the Officers of State, Duke Hamiltoun, Tweddale,

and Queensberry, were named for the one side; and Atholl, Argyle, Kincardine, the President, and some others, were nam'd for the other.

Having met at the Abbey, Lauderdale offered, in his Majesty's name, to redress such grievances as were nam'd; viz. that he would as Commissioner consent to discharge the monopolies upon the salt, brandy, and tobacco, though his Majesty might doubtless impose these; having by express Act of Parliament, the sole power of ordering all commerce with strangers, and in imposing of all which, he could easily clear himself: for the pre-emption of the salt was established by Exchequer, in favors of our own manufacture, and that our salt might not be ruin'd by the salt made in England; the imposition upon brandy was established by a special statute, for discouraging the importation of that liquor, to the prejudice of our own malt; and the imposition design'd to be laid upon tobacco, was in favors of these noblemen who had been engag'd cautioners in publick debts, during the late rebellion; which as it was not just their heirs should now pay, so the same could not be easier paid than by an imposition upon tobacco, which was an unnecessary commodity, brought from foreign plantations, and serv'd only to draw out from us that money which was necessary for nobler uses. This would certainly have satisfied, if the design of such as manag'd that whole affair had not been, not to suffer Lauder-

dale to be reconcil'd to the people, and to persuade the Court, that he was not able to serve the King here; and therefore the shift found out was, that private persons could not justly take upon them to predetermine the High Court of Parliament, which was then fitting, to treat of such matters as necessarily requir'd a Parliament: and though it was answer'd, that the design of this meeting and offer was only to satisfy such as had already shew'd any dissatisfaction, and to endeavour to obviate other grievances not yet nam'd, by suitable remedies, yet this answer satisfied not, and so the assembly broke up. Sir George Mackenzie, finding that their differences reacht further than was at first design'd, resolv'd to try in a private conference, if Lauderdale would consent to a rectification of some other abuses; and having met privately upon that design, his own friends grew jealous that he was to desert them; and Lauderdale, that he design'd only to pump him: And thus his love to his country drew upon himself that hatred, which he endeavor'd to lessen in both against one another; and those who would not believe Lauderdale, even when he spoke truth, seem'd to believe him when he said, in policy only, that Sir George Mackenzie had offer'd to betray them; albeit they found that this was a mere court trick, for Sir George had at that time refused to be Justice Clerk, and had adher'd very vigorously to them thereafter, in resentment of this injury done him by Lauderdale; and Lauderdale trusted him thereafter with

all affairs of the greatest importance and secrecy, which certainly he had never done, if he had found that he had betray'd his old friends.

Both parties, yet doubtful of success, us'd all endeavours for ingratiating themselves with the people. Lauderdale caus'd pass three Acts, discharging the imposts upon salt, brandy, and tobacco; and the other party spoke of nothing but preventing such abuses for the future; of filling Judicatures with able Judges, of reforming the Mint, which was so corrupted, and allowing some liberty to such as were straitened in their consciences. It was also propos'd, that the late Acts against the Burghs and the Advocates should be rescinded; and that all old publick debts, such as levies, maintenance, taxations, should be discharg'd: reports were also spread amongst the people, that his Majesty resolv'd to be freed from Lauderdale, and that the Parliament of England would make an address against him; which would oblige the King to quit him, though he were not otherways thereto inclin'd: to balance which, his Majesty was induc'd to write a letter to Lauderdale, all under his own hand, giving him new and fresh assurances of his kindness.

The Party, finding that Sir Andrew Ramsay then Provost of Edinburgh did much influence the Burghs by his own and his colleagues leading vote, and by the eminent interest

that the good town of Edinburgh has always amongst the Burghs, which Sir Andrew had much improv'd, by his being long continu'd, and highly therein supported, they therefore resolv'd to declare him incapable; and in order thereto, an impeachment was given in against him, being presented by the Earl of Eglintoun. But it was contended "that it behov'd to be sign'd by some accuser, else it could not be receiv'd; and if any such custom were receiv'd, any man's reputation might easily be blasted; to prevent which our Law had, in imitation of the Civil Law, appointed that the accuser should find surety to insist under a liquid penalty." To which it was answer'd, "that though private accusers were oblig'd to sign their accusations, yet it was lawful for the Parliament to accuse any man; in which pursuits at the people's instance, no surety could be found: And it was fit that, since some men were so powerful that no private men durst undertake them, therefore the Parliament should insist against them; by which means great men might be deterr'd from oppression, and public justice might be the easier satisfied." Upon this debate, his Majesty's Advocate was desir'd to give his name to the pursuit; it being alleg'd that he was thereto oblig'd, *ratione officii*, as being in Law *calumniator publicus*; but this he declin'd, contending most justly that he was not the Parliament's, but the King's servant, and therefore he would pursue no man, without express warrant from the King or his Commissioner; nor knew he

Nov. 25.

the Parliament to have any authority, except with the King's concurrence, for they were only his great Council. This forc'd Sir Andrew's enemies to prevail with some of the citizens of Edinburgh to sign an accusation against him, bearing that, "albeit by the Act against billeting it was declared a crime in any man to endeavour to thrust any of his Majesty's subjects out of their employments, without a formal and legal sentence, yet he the said Sir Andrew had procur'd a letter from his Majesty, to thrust Mr. James Rocheid out of his employment as Town Clerk of Edinburgh; and albeit the making lies betwixt the King and his people was punishable by death, yet he had represented to his Majesty, that the town had risen in a tumult against the King, and had thereupon procur'd another letter, commanding the Privy Council to proceed against the chief citizens as malefactors." This process struck at Lauderdale himself, as the procurer of these letters; and therefore Sir Andrew's friends did prevail with him to demit his employments, both as Provost of Edinburgh, and as Lord of the Session. But many thought that Lauderdale ought not to have deserted him, since this discourag'd men from adhering to his interest, and was a tacit acknowledgement of his being convinc'd, that these letters had been unjustly procur'd from the King, by him as Secretary: though, on the other hand, this shew how desirous Lauderdale was to oblige even his enemies by all fair means, and to bend all his interests so as might best quiet his native country.

Lauderdale, finding his brother Hatton was accus'd for lessening and corrupting the coin, caus'd try the coin by his Majesty's command at London; where the tryal being, by confidering if in a great sum many pieces were light, and several pieces being found light, it was answer'd by Hatton, that false coiners might vent some of these adulterous pieces; but the tryal in Scotland being by Efsay boxes, wherein a part of every melting is kept entire, the coin was upon examination found sufficient. Upon pretext of this tryal, he was sent for from Court, where he had officiated as Secretary in his brother's absence, and the Earl of Kincardine left in his place; who manag'd his trust so faithfully and dexterously, that he procur'd amongst other things a letter for adjourning the Parliament; and immediately upon the adjournment, the Duke of Hamilton and Lieutenant General Drummond resolv'd to go to London, and with them went the Earl of Tweddale, who was afraid that he might have been excluded in any capitulation that was to be made: But such as understood the King's and Duke's averfions for him, because of his having abjur'd the King and his family in Cromwell's last Parliament, endeavor'd to dissuade him from the journey. At their arrival, the King charg'd them with having endeavor'd to undermine the very foundation of his authority, by offering to bring in things in plain Parliament, without bringing them first to the Articles; which Articles he lookt upon as the securest fence of his

1674.
Jan. 8.

Jan. 17.

government: And though they endeavor'd to deny any such attempt, declaring that all they did as to that point, was only to assert that the Parliament might consider even what was rejected in Articles, yet this stuck so with the King, that in every thing else he was most unfavorable to them; telling them, that he would not suffer his servant to be torn from him, either by billeting, as Middleton had done, nor by cabals amongst such as design'd to succeed, as he found to be design'd in this case; and as in honor he could not quit them who had serv'd him faithfully, so he was sure no man would hereafter serve him, if they should be expos'd to the malice of such as became their enemies for adhering to his interest. The King, unwilling to suffer those noblemen to stay at London, where they were daily concerting a correspondence with Buckingham, Shaftsbury, and others who were discontented there, and yet being unwilling to command them to return, because such commands were not legal in England, did as an expedient desire them to return, and they should know his mind there; and it was insinuated to them, by such as pretended to much intimacy with the King, that his Majesty resolv'd to suffer the Parliament to sit at the appointed time; which was all they desir'd, hoping that if the Parliament had been allow'd to sit, they would have impeacht Lauderdale's friends, and have supplicated the King against himself, as a person under whose ministry this nation could never think itself happy. In expectation of this, Duke

Hamilton assur'd his friends by letters, that the Parliament was to sit at the time appointed; and upon this expectation, above a thousand horse went to meet him, and very many convoy'd him to the Parliament House next day, the Commissioner being left alone: but they were all very strangely surpris'd to hear, immediately after prayer, an adjournment by the King's command. It was resolv'd that, if any such adjournment should come, the Duke of Hamilton should, before it was pronounc'd, entreat that the Parliament might answer first the King's former letter; that thereby the world might see, that they had not at first delay'd it from any unkindness to his Majesty, but in expectation of having, by this means, an occasion of representing the present condition of the kingdom. In pursuance of this resolution, Duke Hamilton, not being able to make this motion before the adjournment, did immediately after the adjournment humbly offer it; but the Commissioner, who was unwilling to have such a representation made by men in such a ferment, told him that this nor no motion was receivable, after the adjournment pronounc'd by his Majesty's command; after which they were no more a court of Parliament, and so could not act as such.

March 3.

Lauderdale knowing that whilst the members were in expectation of a new session, they would continue their intrigues against him, and finding that their aversion was

too deeply rooted to be remov'd, prevail'd with the King to dissolve them upon the 19th day of May, by proclamation; and though it cannot be deny'd but the King may dissolve Parliaments, as he calls them, by proclamations, yet it was observ'd, that no Parliament in Scotland had ever before that time been so dissolv'd. But however, Lauderdale desirous to satisfy the people, and to let them see that the King would not have them owe his kindness to a Parliament, did

March 24. procure a proclamation to be emitted, wherein the King discharged the exacting of all penalties due by penal statutes, and all bygone maintainance, cess, and such like publick impositions; and suspending all exacting of annuities till further order. This was indeed not only called an Act of Grace, but was such really; and yet so prevalent is humour above not only reason but true interest, that these very men who had so passionately crav'd this, amongst their other grievances, treated it in ridicule, lest it might leave some kind impressions upon the people for Lauderdale; and though Duke Hamilton had very earnestly prest for this discharge, yet he would not consent that the proclamation should discharge the taxation 1633, because he pretended a right to them; and therefore prevail'd with four eminent lawyers to give under their hands, that his right thereto could not be discharged by proclamation; though this was the most unfavorable of all these old debts, both in its rise, the people having got nothing for it, and in the manner of exacting it,

most of them having pay'd all formerly, though they had neglected the keeping discharges after so long a time: and though the King offer'd to repay the Duke, in as far as his debt would extend, yet he obstinately oppos'd this favour intended by the King to his people, and forc'd the Council to cancel that part of the Act of Grace, before it was proclaim'd; in which he lost himself much in the favour of the people, who, (beside the present advantage that they had, by that discharge of their taxations,) do hate avarice more than any other vice in their governors, or in such as are marked out for government; because every man fears oppression where he sees avarice, the one of these vices being the necessary aliment of the other. Lauderdale likewise procur'd the recalling his own Commission, because a constant Commissioner was one of the grievances propos'd in Parliament, and being a great charge to the King, and a station in which the subject may be easily oppress'd. May 20.

The Earl of Callender, being in process against the Earl of Dunfermline, lost an Interlocutor; whereupon Sir George Lockhart, being Callenders Advocate, advis'd him to appeal to the Parliament; hoping thereby to bring the President of the Session and his friends in question, knowing that Dunfermline, as Lauderdale's uncle, would want in Parliament that favor which Callender might expect, as having married the Duke of Hamilton's daughter; and that the Feb.

Parliament would be glad to draw to itself the last and supreme decision of all causes. This appeal displeas'd most sober men, who consider'd that, by this method, the nobility who always govern'd Parliaments, would thereby too much influence private causes; and that ignorant members of Parliament would have an equal vote, in the subtlest cases of law, with those whose breeding and experience had render'd them fit dispensers of justice. Nor did the tediousness and expence that necessarily attended this new way, please any who were indifferent; to which reasons, Lauderdale, in his representation to the King, added, that in the Session the King had the sole nomination of all the Judges, whereas the Parliament was not of his election. Callender being cited for this appeal, desir'd to know from Sir Robert Sinclair, Sir John Cunninghame, Sir George Lockhart, and Sir George Mackenzie, his Advocates, how to behave in it; whereupon they drew a paper, declaring that he design'd nothing thereby but to protest for remeid of law; and having sign'd this paper as their judgement, they were the next day call'd in, and examin'd upon this paper, to which they all adher'd: in all which, Sir George Lockhart's design was to bring in this trial before the Parliament, hoping thereby that they would lay aside the President, and leave the chair vacant for him.

Lauderdale having the greatest part of the Session, with the President, at his devotion, thought it would conduce

much to convince the King of the legality of his procedure, and would shew much his influence in the kingdom, that the Sefsion should own to the King, how legally he had proceeded, and how sincerely he had adher'd to the interest of the Crown; which they did in a very obliging letter; and immediately after he went to Court, taking the Lord President and the Lord Craigie with him, to second their own letter. At his arrival, he was received by the King with great kindness; and after he had given a large account of the state of affairs in Scotland, and of the kindness even by the Sefsion to the Royal interest, the President did, in another discourse, give a most advantageous relation of Lauderdale's proceedings; saying for him in friendship, what he could not say for himself in modesty; to which having subjoin'd a complaint against the Advocates, a letter was sent down May 19. by his Majesty against appeals,

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“CHARLES R.

“Right trusty and well beloved Cousins and Counsellours, right trusty and well beloved Councillours, and trusty and well beloved, we greet you well. We received your letter of the 28th February last, with an account of these appeals given in to you by the Lord Almond and Earl of Aboyne, but could not then return any answer, the Sefsion being up:

And now, upon full confideration of that whole affair, we find it indifpenfably necefsary for our fervice, and the main-
tainance of our authority, and for the quiet and fecurity of
our fubjects in their fortunes and eftates, that the honour
and authority of our College of Juftice be inviolably pre-
ferved; and that there be an entire confidence in, and defer-
ence to, all the decreets and fentences thereof: And after
the laudable example of our royal progenitors, we do af-
fure you, that we will constantly maintain our authority exercifed
in that Court, againft all incroachments, indignities and re-
proaches that may be attempted againft the fame, or againft
any of the Lords of Seflion, whom we fhall always caufe to
be held in fpecial honour, as thefe who represent our perfon,
and bear our authority: And as we cannot but declare our
difatisfaction with, and abhorrence of thefe appeals, fo it is
our exprefs pleafure, that fpecial care be taken to prevent the
like practices for the future; and to that effect, that you
caufe folemn intimation to be made to all advocates, clerks,
writers and others, who are members of, or have dependence
upon the College of Juftice, and others whom it may con-
cern, that none of them prefume to advife, confult, propofe,
plead, fpeak or fuggeft any thing, that doth exprefs or im-
port the charging of any of the decreets or fentences of the
Lords of Seflion with injuftice; whether in the terms of
appeals, proteftations, fupplications, informations, or any other
manner of way, either publickly in the exercife of their

function, or privately in their ordinary conversation with their clients, or others, under the pain of being utterly excluded from exercising any office in, or depending upon the College of Justice; and that all advocates to be admitted hereafter, have the same declared to them, as a part of the oath *de fidei*, and obedience to the Lords, which is accustomed to be given by advocates at their entry. And we are graciously pleased, that you proceed no further against those who gave in those late appeals, nor against these advocates who refused to give their oaths concerning their accession thereto; providing these advocates do solemnly disown these appeals, and all other appeals and protestations, which may any ways import a charging of the sentences of the Lords, or their interlocutors, with injustice; and in case they refuse to disown the same, we peremptorily command you to debar them from the exercise of any part of their function, as advocates, in time coming; and we do authorise and strictly command you, to declare any member of the College of Justice, or others who depend thereupon, who shall not give obedience in the particulars above mentioned, incapable to exercise any office in or depending upon the College of Justice. And for the better discovering contrivances, you are to receive no supplications, but such as are signed by an advocate: As also you are hereby required, if need be, to put all who depend upon the College of Justice to give their oaths, as parties or witnesses, for discovering the contrivances; and in

case any others, having no dependence upon the College of Justice, shall present any thing, expressing or importing the charging of any of your sentences with injustice, in the terms aforesaid, or any other way, we do authorise and command you that you immediately secure their persons, if they be present; and if they be absent, that you issue forth charges and all other executions against them for that effect; and that you give an account thereof to us, that we may signify our further pleasure therein: For doing of all which, this shall be your sufficient warrant: And so we bid you farewell. Given at our Court at Whitehall, the 19th day of May 1674, and of our reign the 26th year.

“ By his Majesty's Command,
“ LAUDERDALE.”

Immediately after Lauderdale went to London, the fanatics began to preach openly every where; and one Master Welsh, grandchild to the famous Master Welsh who had been banish'd, did keep field conventicles in Fife, drawing at first the rabble, but at last even the gentry, to follow him. He was a person of much courage, but no parts; and yet his courage was more rais'd by the hopes he had, that the Chancellor being dissatisfied, would be pleas'd to see that the present governors could not suppress these insolencies;

though he and all the other fanaticks did pretend, that the Duchefs of Lauderdale had promis'd to procure them indulgences, and it is probable that, to amuse fo strong a party, she had us'd some fuch womanly compliances. Nor did these confusions contain themselves long in Fife; for they soon like feeding flames seiz'd Lothian, where many pulpits were entered by their preachers, and even the Magdalene Chapel of Edinburgh was broke open for them; and petitions for able minifters were given in to the Council, by many hundreds of women, who, filling the Parliament Clofe, June 4. threatened the Archbishop of St. Andrews, who paff along with the Chancellor, for whose coming he had waited in his own chamber; and some of them had conspir'd to fet upon him, when a woman, who I fhun to name, fhould raife her hand on high as a fignal: to prevent which, the Chancellor, by entertaining the woman with infinuating fpeeches all the time as he paff to the Council, did divert that bloody defign. When they were enter'd the Council Houfe, they call'd immediately for guards, and ordain'd that the tumult fhould be inquir'd into, and its authors punifh'd; and accordingly Nov. 24. many of them were banifht. The gentry alfo of Fife were fin'd for having been at these field conventicles, and forces were rais'd to prevent future diforders; over whom Sir George Monro was made General, to the great astonifhment of all who knew his principles.

The Advocates who were debarr'd, took great pains to engage in the combination the Burghs Royal, that were to meet at Stirling; but baillie Baird, who represented Edinburgh, wanted courage, and so that meeting was adjourn'd till August thereafter, at Edinburgh; where when they met, July 7. a letter [July 3.] was presented to them, wherein his Majesty desir'd that they might consider, how much the publick interest of the Burghs Royal had been prejudg'd, by their choosing gentlemen or noblemen's servants to represent their burghs; so that in effect they made not now a distinct State of Parliament, but depended upon the nobility and gentry; and therefore desir'd, that they might renew their old Acts of the Convention of Burghs against such elections. The King's design in this was, to exclude such as had been factious in the former Parliament, and to engage the Burghs to an immediate dependence upon the Crown: to prevent which, reasons were drawn up, and dispers'd amongst the representatives of the Burghs, representing, "that since the burghesses of, and traders in towns, did not understand law, it was fit that some should be choos'd who were able statemen and lawyers, for defending their privileges and the general interest of the kingdom; the want of which weakened them in all publick debates, when any differences fell in betwixt them and the other two States, as was clearly seen in the late debate betwixt the Burghs Royal, and the Burghs of Regality and Barony; and that the electing of

such able men was the only expedient, whereby the Parliament of England preserv'd its liberty, and their national privileges. Nor was there any hazard to trade, by choosin^g such as were not traders themselves; for there were others who could instruct them in trade, if they were honest, or oppose them if they were not so: and though the Burghs would not, by Acts, straiten themselves in their liberty of electing such as were traders, yet it was not imaginable but that every Burgh would be so wise as not to choose such as were enemies to it." The hazard, likewise, of prelimiting the Parliament by such Acts, wherein the Burghs behov'd to determine who were to be members of Parliament, was strongly urg'd; whereby it was pretended, that not only might the makers of such Acts be pursu'd in Parliament, but that the Parliament might be, by such unkind usage, and the imposing upon them, be inclin'd to abrogate and antiquate those laws whereby such Conventions of Burghs did sit, and make these prelimiting statutes. Such as were for the King in the Convention, prest that the statutes might be renewed, before any answer should be made; foreseeing that if any answer were made before the King was obey'd, the design behov'd to be a declaration in favors of the malcontents. But it being carry'd by votes, that an answer should be made to his Majesty's letter for this time, insinuating the reasons why they renewed not these Acts of Burghs, as was desir'd, there were next morning several

draughts of a letter offer'd; but all of them displeasing the Committee appointed to draw the letter, Sir George Mackenzie was prevail'd with to draw a letter; which being carry'd up to Sir George Lockhart, by Master Walter Pringle, these two alter'd the first draught, so as, of a discreet and dutiful letter, it became, by adding what was humours, and striking out what was discreet, a most unpolisht and undiscreeet paper: and when Sir George Lockhart was askt why he had deform'd it so, his answer to James Stewart was, that it was fit to make Sir George Mackenzie unpardonable. This letter being past in the Committee, who follow'd implicitly any thing that was call'd Sir George Mackenzie's draught, it was sent up to the King, who justly resented the injury done him, more by the letter, than by the refusal; and who immediately order'd the Privy Council, by a letter, to examine who were authors of it: which being done, Petrie provost of Aberdeen, Ainsley provost of Jedburgh, and Anderson provost of Glasgow, were fin'd for their accession to it,

His Majesty having ordain'd by his letter such as would adhere to that appeal to be debarr'd from pleading, and Sir George Lockhart and Sir John Cuninghame being thereupon called in before the Lords, they own'd that, though formal appeals might be said to be contrary to the 62 Act Par. 14, James 2, yet a protestation for remeid of law

might be allow'd; whereupon they were debarr'd from their employments, till the King should declare his further pleasure. And albeit it might have been reasonably concluded, that this exclusion should have pleas'd the younger Advocates, whom those seniors overshadowed, interrepting the chief advantage and honour that was to be expected in that society; yet most, fearing to offend so eminent men, whom they knew would soon return to their stations, and being push'd on by the lords of the party, and the discontented persons to whom they ow'd their employments, went tumultuously out of the Session house, with these who were debarr'd: and thus, as Sir George Lockhart broke that society at first by his avarice, in the matter of the Regulations, he broke them now again by his pride, in the matter of the Appeals; and by raising a clamour against the President, and joining in the popular dissatisfaction, he diverted early from himself, that great hatred which was so justly conceiv'd against his insolence and his avarice; two crimes which were more eminent in him than his learning.

June 24.

Sir George Mackenzie having been in opposition to Lauderdale, it was believ'd that he had contriv'd this appeal; and Sir George Lockhart had, to draw him into the society of the appellers, pretended that this appeal was at first design'd, to the end that he might become surer, by having others of his own profession engag'd with him in the opposi-

tion. Nor was Sir George Mackenzie averse from receiving the assistance, till he found the King had so highly repented it, that he had, by a proclamation, declar'd upon the word of a Prince, that such as return'd not to their employment, betwixt and a prefixt time, should never be receiv'd: which proclamation was suggested by the President, who by this means concluded, either to baffle the appealers, if they disclaim'd the appeal, or to break them, if they after that day adher'd to it. And though it was most unfit to cause the King promise this, upon the word of a Prince, yet Sir George Mackenzie did so much tender the reputation of his King, that he, having been bedrid of a broken leg when the rest were debarr'd, shun'd to have himself debarr'd, or publicly to own the appeal; though to secure such as had, he declar'd that he would not return to his employment without them: Which not satisfying Sir George Lockhart, who prest still that Sir George Mackenzie should be debarr'd, he was content, in a letter under his hand, to oblige himself in those terms; but this letter not having satisfied, and he being prest, merely to satisfy Sir George Lockhart's private humour, he call'd for his former letter, and wrote in a postscript these words: "But if I enter, and put myself in the same condition with the rest, I do declare this letter, and all the obligations therein, to be void and not obligatory:"

Nov. 24.

And having own'd the appeal with a very undaunted courage, did from that hour despise that party which had

jealous'd him, after so many proofs of his courage and fidelity, to please a little creature, who had never follow'd them, but his own passion; to which he and they were become such slaves, that they had thereby lost the glory and reputation of impartial reformers, which had so much recommended them at first, whilst they followed Sir George Mackenzie's disinterested advices. This is that letter from which the party concluded Sir George Mackenzie to be guilty of perjury, in having enter'd before the rest; dispersing copies of the letter, without the postscript, because they knew the postscript destroy'd their malicious pretences.

Sir George Lockhart's love of money making him weary of that love to revenge, he persuaded the Appealers, (for so all the adherers were call'd,) to give in an address to the Privy Council; but so bitter and humorous, that Sir George Mackenzie, though he had concur'd in furnishing materials and argument, did with some others dissent from it; till they were again conjur'd, by some of their comrades, not to make a rupture, at a time wherein their fixt adherence to one another was their only security.

1675.
Jan. 28,

“Unto the Right Honorable the Lords of his Majesty's Privy Council, The humble Address of the Advocates debarred from their employment,

“Humbly sheweth,

“That whereas the petitioners, upon perusal and consideration of his sacred Majesty's late proclamation, finding the withdrawing from the exercise of their employments, is looked upon as a combination, and as proceeding and carried on by factious practices, and other unjustifiable designs; and being deeply sensible of their unhappiness and misfortune, to lye under such disadvantageous impressions in the opinion and apprehension of their most sacred and redoubted Sovereign, whom they shall ever acknowledge to be most just and gracious, and that they were unworthy of his Majesty's protection, or to breathe in his dominion, if their loyalty, allegiance, and duty to his Majesty's interest and service, were not as eminent and exemplary as might be justly expected from persons of their station, capacity, and knowledge; and detesting from their very souls all disloyal practices, which do in the least tend to the lessening or diminution of his Majesty's prerogative, power, and greatness, in the preservation whereof, the petitioners are fully convinc'd, is bound up the happiness, peace and security of

his Majesty's subjects; and above their greatest concerns, being desirous to remove all jealousy and suspicions as to the same, and to go the utmost lengths they are capable of, in order to his Majesty's satisfaction, and their own vindication; and knowing no more proper way to address to his Majesty, for clearing that they are peaceable and loyal subjects, and free of all factious designs and practices, than by applying to your Lordships of Privy Council, that your Lordships may be pleas'd to represent, and transmit their submissions and acknowledgments after mentioned, to his Grace the Duke of Lauderdale, his Majesty's Secretary, for taking off the odious character of disloyalty, which the petitioners are desirous to redeem by all that is most dear or of highest concernment to them, though it were the loss of their employments, or the greatest advantages upon earth: Therefore the petitioners do humbly presume, shortly to state and represent the grounds and reasons aftermentioned, which seemed of importance to the petitioners, why they could not disown protestations for remeid of law, as unlawful in the general; and the difficulties that did occur to them, to continue in the exercise of their employment as Advocates, and did rather choose to acquiesce and submit to the Lords of Session their sentence of deprivation; and which reasons, as the petitioners represent for no other design or end but for clearing that their deportment was free of disloyalty, so your Lordships shall find with how little

pertinacy they insist upon the same, and how much they are desirous and dispos'd to receive satisfaction therein, as an evidence of that submission and duty they owe, and will ever render as to what is, or may be conceived to be, for his Majesty's interest or service. The grounds whereupon the petitioners did scruple to disown protestations for remeid of law, to be unlawful in the general, having formerly by an opinion under their hands asserted the lawfulness thereof, were shortly these; some whereof were offered to the consideration of the Lords of Session, the time of the exhibiting to them the lawyers opinion. First, the Lord Almond having given in an appeal, and protestation for remeid of law, and the Lords of Session, by their letter to his sacred Majesty, and reasons and inconveniences represented against the same, having chiefly insisted that such appeals tended to the subversion of that judicature, by reason all process would be sifted, and execution stopped upon their decreets and sentences; the lawyers conceived that the Lords of Session had only represented, and given their judgment against appeals, as they did sift process and stop execution; and so did no ways condemn or concern protestations, which were ever acknowledged could have no such effect. 2. Before the petitioners did own, or give any judgment as to the lawfulness of such protestations, they did make an exact search, and diligent review and enquiry of all laws, the opinion of lawyers, and of all precedents upon record, to try if all or

any of these had ever condemned such protestations for remeid of law to King and Parliament; and after trial and enquiry could find none, and can with great ingenuity assert and declare that, if they had found one single precedent to the contrary, they would have demurred to have given any judgment as to the same; and so the petitioners, looking upon protestations for remeid of law as *de genere permissorum*, and as suitable and consonant to the subordination of the Lords of Session to the supreme Court of Parliament, *hoc ipso*, that, by no law precedent upon record, or authority of lawyer, it appeared they were prohibit, it necessarily followed that they were lawful and allowable.

3. By the same search and enquiry the petitioners do find, that both precedent upon record, and authority of lawyers, has justified and allowed the lawfulness of such protestations for remeid of law; as namely, an Act of Sederunt made by the Lords of Session, and recorded in their books, 1567; wherein, albeit all murmuration is prohibit to Advocates or parties, against the Lords of Session their decreets, yet it expressly excepts protestations for remeid of law.

4. The lawfulness of such protestations is expressly asserted by the opinion of most judicious and most eminent lawyers, as Lethington, Balfour, and Hope, in their titles anent the Lords of Session; and it cannot be supposed but these eminent lawyers were jealous of the honour, and just privileges, of the Lords of Session, and who, by their learned writings,

would have transmitted nothing to posterity that was derogatory or prejudicial to the same. 5. It appears by many Acts of Parliament, that the Lords of Session have acknowledged their subordination to the Parliament, not only in its legislative capacity, but even as to its judicative power, in the dispensing of justice in particular cases, where the question was *de jure constituto*; and the Parliament's decision was a rule to the Session, in these and the like cases; as may appear, Act 79, p. 10, Ja. 3. as to the case of purpriefion; Act 83, p. 11, Ja. 3. as to the case of a conjunct fiar judicially renouncing; Act 69, p. 6, Ja. 5. as to the case of treason against an apparent heir; Act 94, p. 6, Ja. 6., that letters of horning could not be proven by witnesses; and many others that might be instanced. 6. By many Acts of Parliament, it is ordained that Bills of Complaint should not, in the first instance, be tabled before the King and his Parliament, but before the ordinary Judges; which supposes that, in the second instance, they might be tabled, and protestations for remeid of law entered for that effect. 7. Unless his Majesty and his Estates of Parliament would rescind the decreets of the Lords of Session, if they found just cause, when such decreets were expressly contrary to law, the Parliament could give no remedy; and *hoc ipso* that the King and Parliament has the legislative power, it must necessarily be granted, that they have the power to vindicate and preserve laws made by them, against all violations of the

fame. 8. His Majesty and his royal ancestors, and their Estates of Parliament, have not only a legislative power, but a judicial and judicative power; otherwise the Parliament could not be judges in the first instance, as certainly they may, although for conveniency causes are appointed regularly to be tabled before their ordinary judges in the first instance: And the King and the Parliament, when they erected the College of Justice, did not grant this judicative power privatively. Now this judicative power in the Parliament is not subordinate to the Session, and is as little co-ordinate or equal; that being repugnant to the policy of all nations, which cannot admit two judicatories, equally supreme in the distribution of justice, because two such Courts might interfere, by contrary decisions, and execution thereupon. And therefore the Parliament's judicative power is more supreme, and the Session subordinate to the same; and consequently the Parliament, if they find just cause, may rescind decreets of the Session, upon protestations made and entered for that effect. And accordingly, by a special Act of Parliament, viz. Act 39, parl. 11, James 6. it is provided, that decisions of Parliament should not be impugned by inferior judges; which no doubt comprehends the Lords of Session, otherwise they might rescind decreets of Parliament, which none can assert. 9. The 68 Act, parl. 5, James 5. intituled "the King's good mind anent the Lords of Session," does clearly suppose and evince, that there is place of com-

plaints against the Lords of Session their proceedings, if there be just cause for the same, before his Majesty and Estates of Parliament. And, lastly, the petitioners, in asserting the lawfulness of such protestations for remeid of law, were determined by Act of Parliament, viz. Act 130, p. 8, Ja. 6. which asserts the supremacy and authority of Parliament, against all derogations thereto or diminution of the same. The petitioners had also under their consideration, before they gave any opinion as to the said protestation for remeid of law, the 62 Act parl. 14, James 2. appointing all causes cognoscible by the Session, to be utterly decided by them, but any remeid of appellation to King or Parliament; and the 39 Act, p. 5, Ja. 5. declaring that the decreets and sentences of the Lords of Session should have the same strength, force, and effect as the decreets of Session had in all times byrun: As likewise did consider the letter written by his Majesty's second Parliament, in the case betwixt Sir Thomas Hamiltoun and Alrud; these lawyers having been engaged in that case. And that which did occur, and fully satisfy the petitioners at that time, were the following answers. 1. That the Act of Parliament made in King James the second's time, did only relate to the Session as it was at that time; which was a Committee of Parliament, from whom there could not lye any appeal to the Parliament itself; which could not be extended to the College of Justice, which was thereafter erected a Judicatory, by autho-

rity of King and Parliament, with subordination thereto; and was no part of the Parliament, as the former Session was. And albeit, by the 39 Act, parl. 5, Ja. 5. it is declared, that the Lords of Session their decreets should have the same strength and force as the decreets of the former Session, yet the petitioners humbly conceived, that could not carry the exclusion of appellation, which was specially granted to the former Session, from whom there could not appeals lye to the Parliament, whereof the Session was a part; which did no ways quadrate with the College of Justice, which was distinct from the Parliament, and subordinate thereto. 2. Though the College of Justice could be reputed in the same case as to appeals, yet the Act of Parliament of King James the second can only be understood of appeals as properly such as lifts process and stops execution, but no ways of protestations for remeid of law; and which is evident, both from the words of the said Act, appointing causes to be utterly decided, which is no more but that process and execution shall not be stopp'd nor interrupted; as likewise from evident reason, because the Parliament might have reviewed and rescinded the decreets of Session, when it was a Committee of Parliament; which is undeniable, seeing a Parliament may rescind it's own decreets; and therefore it must much more hold, that the Parliament may review or rescind the decreets of the Lords of Session. And the truth thereof appears by the foresaid Act

of Sederunt, made by the Lords of Session themselves, and recorded in their books; and by the authority of Lethingtoun, Balfour, and Hope, and the precedents and cases recorded by them. And as to the Parliament's letter, the petitioners conceived it did only militate against appeals, but could not be obtruded against protestations for remeid of law; first, because Allrud had not protested for remeid of law, but the decreet of Session had taken full effect by possession; and such protestations are necessary to be entered and interponed, for taking off the acquiescence of parties; just as appellations behoved to be interponed, and as protestations still are, to give the benefit of reprobators before the Lords of Session, without which they are not competent. Secondly, the Parliament's letter is not *inductiva juris novi*, but declaratory; and the Parliament did not intend to give the Lords of Session greater power and authority than they had by former laws; and it is certain that declaratory laws, whatever be the tenor and words of the same, are to be interpreted and restricted by laws whereunto they relate: And it cannot be made appear, by former laws, authority, or precedent, that protestations for remeid of law were judged or reputed unlawful, but on the contrary were owned or acknowledged to be lawful; and therefore the Parliament's letter, being in a private case, and falling under the Act *Salvo jure*, and but declaratory and relative to former laws, and the party interested not having protested for remeid of

law, and the Parliament otherwise finding the decret of the Sefſion upon the matter juſt, they waved the confideration thereof; which was all that the Parliament ſeemed to deſign as the import of the ſaid letter. And as to the grounds and difficulties, whereupon the petitioners conceive that they were ſtraitened in the exerciſe of their employment, even after the Lords of Sefſion their explanation of his Maſteſty's letter, they do humbly repreſent the ſame, with great deſire that they may be cleared as to a faithful diſcharge of their employment, and exoneration of their duty to their clients; in reſpect that his Maſteſty's letter, bearing that "it ſhould not be lawful to Advocates, to adviſe, conſult, propoſe, plead, ſpeak or ſuggeſt any thing, that doth expreſs or import the charging of the decreets of the Lords of Sefſion with injuſtice, whether in the terms of appeals, proteſtations, ſuplications, or any other manner of way, publickly in the exerciſe of their function, or privately in their ordinary converſation, under the pain of being utterly excluded;" with power to the Lords of Sefſion to take Advocates and Parties oaths as to the ſame; albeit the Lords of Sefſion did find it fit to explain his Maſteſty's letter in thir terms, that it ſhould be reſtricted to the caſe of decreets and acts extracted, and that the taking of Advocates and Client's oaths ſhould be reſtricted to the caſe of diſcovering appeals and proteſtations; yet the petitioners do, with all ſubmiſſion, preſume to ſay, that the difficulties as to the exerciſe of their employ.

ment as Advocates, with that duty and faithfulness to their Clients' interest that is necessary, seems still to remain. For, first, if an act or decret be once extracted, though it were but in the Outer House, and for not compearance, yet as appears by the words of the explication, it could not be questioned, seeing Advocates may not advise, consult, nor do any thing, that may import or suggest the injustice of the Lord's Acts or Decreets, if once extracted. 2. Though acts and decreets should be extracted, bearing compearance and debate, yet as appears by Dury, and all others who have digested and collected the Practiques of the Session, it has been competent and allowed to parties and Advocates, in all ages, to question the said acts and decreets, by way of Suspension or Reduction; and many times the said acts and decreets have been rectified, and reconsidered by the Lords, *super eisdem deductis*, and which is necessary as to the just interest of his Majesty's lieges, and was never looked on as any derogation to the honour of the Lords of Session, they themselves being Judges as to the same. 3. The Lords of Session, in case of precipitation used in extracting acts or decreets, or that they were extracted contrary to the minutes and alledgeances proponed, have been in use summarily to recal them, and ordain them to be brought back, without necessity of Suspension or Reduction to be raised for that effect; which would appear cannot now take place. Likeas this would tend to an encouragement to get acts and de-

creets precipitately extracted, without shewing the scrolls to the parties concerned, as is necessary to be done for security of their interest. 4. The petitioners are not in law liable to give their oaths, or declare *super inquirendis*, except in matters of treason; as is expressly provided by Act of Parliament Ja. 6, p. 10, cap. 13; and far less can be liable to give their oaths, for discovering what relates to the practice of their employment betwixt them and their Clients, and would abridge the ingenuity and freedom that is allowed every where to so liberal a profession: and Advocates and Clients would be in continual fears and jealousies, and in distrust and diffidence of each other; Clients not daring to inform, nor Advocates to advise, but with great reserves. And thus the petitioners, having humbly represented the grounds, reasons and difficulties, that did occur to them, and that behoved daily to influence their practice in the exercise of their employment; yet notwithstanding, being anxious, and above measure desirous, to clear and satisfy his sacred Majesty, how far they are from combination or factious practices, and how much they will lay aside and abandon their own reason and conviction, as to the lawfulness of protestations for remeid of law; as the petitioners acknowledge there are eminent Lawyers upon the Session, of deserved reputation, so if the Lords of Session, by an Act of Sederunt or otherwise, will plainly and clearly declare that protestations for remeid of law, to his Majesty and Estates of Parlia-

ment, were and are in themselves unlawful, and that the Parliament cannot thereupon review and rescind their decreets, if they find just cause; the petitioners will so far defer to their authority as to be concluded thereby, and satisfy what was prescribed and required by the Lords of Session as to that point. And as for the exercise and freedom of their employment, the petitioners, as an evidence how far they are from the least designs of derogating from the just authority of the Lords of Session, do declare, acknowledge, and own the same power and authority to be competent to the Lords of Session, that ever their predecessors did acclaim or enjoy; and will render the same deference and submission, and use no other freedom in debates, informations, petitions, and others, than what the petitioners predecessors did assume, and was allowed as necessary for the vivacity and freedom of debates; and no less necessary for the reputation of the judicatory itself, and for the just interest of his Majesty's subjects, and without which, debates would be insipid and empty discourses, and by the practice of no judicature, is denied or restrained to those of our profession. Which submissions and acknowledgements, in vindication of the petitioners' loyalty, they humbly crave may be transmitted to his sacred Majesty, whose innate justice, clemency and goodness, many times prevent the desires of his faithful subjects, as to their own happiness: And we cannot doubt but his Majesty will be graciously pleased to

accept of the same, as a full assurance of the petitioners' duty, and loyalty to his Majesty's interest, and of that perfect and entire obedience they owe, and will ever render to the laws of the kingdom, in their just resentment and abhorrence of all factious and seditious practices, as being pernicious in themselves, and fatal and destructive to all publick and private interests."

Sic subscribitur

Rob. Sinclair	Geo. Lockhart
John Cuningham	Wa. Pringle
H. Wallace	W ^m Monipenny
W ^m Clerk	G. Bannerman
A. Spotswood	Rod. Mackenzie
J. Inglis	Colin Mackenzie
W ^m Hamilton	J. Harper
John Eleis	W ^m Murray
M. W. Baillie	Rich ^d Douglass
Jo. Baillie	Jo. Lauder
E. Wright	M. J. Grant
M. W. Dundas	Pat. Smyth
G. Gibfone	Rob. Bennet.
D. Cuninghame	
Geo. Mackenzie	
Geo. Dickfone.	

- Feb. 2. This address having highly offended the Council, who sent it to the King as a most seditious paper, it was resolv'd that Sir John Cuninghame should go to London, to alleviate those informations; whom Sir George Lockhart and Sir Robert Sinclair soon followed, but upon express promise that, if Sir George Mackenzie and those who had sign'd the address, should be pursu'd for it, they should return and concur with him in the defence. Notwithstanding whereof,
- Feb. 20. they having been pursu'd in a process before the Privy Council, Sir George Lockhart and Sir Robert Sinclair retir'd, and lurkt near to North Allerton, without acquainting even their wives of their residence, lest thereby they might have been advertis'd. Whereupon Sir George Mackenzie gave in this Defence.

.....

“ Defences for the Advocates lately debarred from their employments, against the lybell at the instance of his Majesty's Advocate.

“ The Defenders in this process, being fully convinced how much it is the duty of every good subject to obey his Majesty's laws, and to live peaceably; and being not only obliged by their profession to know the said laws, in a more eminent way than others, but being likewise conscious to

themselves how sincerely they have always designed to obey his Majesty and them, upon all occasions; they cannot but account it a great misfortune, and are very deeply sensible of their own unhappiness, in being pursued at the command of their Prince: and that which heightens very much their misfortune is, that this guilt is inferred from a paper, wherein they were so far from misconstruing, or designing to misconstruct, his Majesty or his proceedings, in a factious way, that on the contrary, they designed nothing more by it than, with very much zeal and submission, to clear themselves in the eyes of his Majesty, and your Lordships, from the remotest suspicions of any such guilt. And yet, amidst all these misfortunes, they cannot but hope very much security to themselves, upon the event of this debate; having to do with the best of Princes, whose clemency is the surest refuge even of his erring subjects, and by whose sacred letter your Lordships are, by various and repeated expressions, ordained to proceed against the Defenders *according to law*; and to use *just only and legal means in the tryal of the whole affair, and not to punish the defenders otherwise than according to law.*

“ As to the proposition of the libel, the Defenders are very well satisfied to find, that albeit in all libels of this nature, the proposition ought to be founded upon express and explicit law, (as his Majesty's letter requires,) yet all their guilt

is inferred only from tendencies and insinuations; and your Lordships will be pleased to consider, that nothing is punishable but that which is either contrary to the law of nature or nations, or which is discharged by some express municipal law; for it has been always the great care of all nations, and particularly of our's, not to leave the subjects in an uncertainty, so that they cannot know what to shun; and his Majesty has been graciously pleased to ordain us to be tried by law; nor needed there any laws be made against crimes, if any crime might be punished without a law.

“ Whereas the proposition bears, that it is the duty of all faithful subjects to acquiesce in, and submit to his Majesty's authority and orders, and to the authority and sentence of his Supreme Courts, as to any matter agitate before them, and to his Majesty's Proclamations following thereupon, &c.: The Defenders humbly conceive it is not necessary to debate this part of the proposition, since it will clearly appear, from what follows, that they have not contraveened any of them; and there shall be none more ready to vindicate and assert his Majesty's authority, than they are: But yet, to differ from the Court where one serves, in judgment as to points *in jure*, can be constructed to be no transgression nor misdemeanor.

“ The libel, in so far as it is founded upon the giving in a paper, “ tending to misconstruct his Majesty’s proceedings,” is irrelevant; for as the word “ tending” is used by no lawyer, nor owned by no decision, since the foundation of our Criminal Court; so the consequences that would follow, upon its relevancy, are far more dangerous than the paper quarrelled: for nothing is punishable in law, except it bear in itself a guilt; but so it is that what does only tend to a guilt, is no guilt, and consequently is not punishable; and though lawyers have sometimes punished *conatum et effectum*, yet this is only where these were of themselves criminal, and were not only tending to a guilt, but were a guilt.

2. Nothing should infer a guilt, but that which may be manifestly and distinctly known to be such: *Peccata nocentium nota esse et oportet et expedit. L. qui eum. ff. de injur.* But so it is that these tendencies cannot be known for whether words or papers; and to misconstruct his Majesty’s proceedings, depends not so much upon the nature of the thing that is spoke or writ, as upon the judgment and inclination of the readers and hearers; and these differ much in themselves, according to the several measures of their judgment, temper or interest: and how can the speaker know what will be the hearer’s censure or interest? and how can he evite when he does not know? and how can that be a guilt which no man can evite or know? And it is most remarkable, that as this word is used in no part of our law,

so any Acts in which misconstruing his Majesty's proceedings is declared a crime, having taken all the species of misconstruing his Majesty's proceedings under consideration, they have not so much as mentioned the tendency here libelled; *et casus omisus habetur pro omisso, ubi de statutis agitur.* 3. This would indeed tend to make all Judges arbitrary; for being confined within no known bounds, they may do what they please; and who can prescribe bounds or limits to tendencies? And since there is no law to define what tendencies are, the Judge being freed from law, has nothing to check his inclinations. And thus, what man can be secure, and how uncomfortable a life must every man live, when he knows not whether every word he speaks or writes may not infer a guilt against him? And the great security, in which every man blisseth himself, in knowing that he can defy the malice of his enemies, whilst he observes the laws of his country, is by this "tendency" absolutely taken away and overturned; and the wisest subjects left, like men walking among precipices or coalpits, without the help of any guide or light.

"The libel, in so far as it infers guilt from insinuations, is irrelevant; for all lawyers have been so far from inferring crimes from insinuations, that they have laid down as an unalterable principle, that crimes can neither be concluded, as to relevancy nor probation, except they be as clear as

the light of the sun : and if even equipollencies do not infer crimes, albeit the conclusion be founded upon infallible principles and parity of reason, how can it be imagined that insinuations should be able to infer a guilt ? For an insinuation is but the product of opinion or apprehension ; whereas equipollencie is the product of reason : and how dangerous were it to infer guilt from insinuations, since no subject knows how to obey, nor no Judge is determined as to these ; since no lawyer has owned such a position, nor no practitian has related such a decision.

“ Before the Defenders enter to debate the subsumption of the libel, they humbly beg leave to represent to your Lordships, that they shun to answer any thing of the matter of fact that precedes the giving in of the late Address ; not only because they formerly endeavoured to vindicate themselves, in the late Address itself, as to all that preceded it, but likewise because his Majesty has only ordained, by his letter, that they should be tried upon their late Address.

“ When your Lordships come to take notice of what is subsumed from the late address, ye would be pleased to consider, that the great thing to be weighed in all crimes, but especially those that are founded upon words or paper, is the design of the offender : for though, in criminal actions, the action itself does clear the design of the committer, nor

can the guilt of an action be repaired by the purity of the intention, the committer not having sifted there; yet in crimes which are founded upon dubious words or papers, and where the defenders have committed no deed, there the chief thing to be considered is the intention of the party; and he who does any thing without design, is, in the construction of law, no more guilty, than if he were an infant, or were asleep: for these are only free from punishment, because they were free from design. But of all crimes, misconstructions and reflections do most require, that the guilt should be measured by the design. *L. Lex Cornelia. § 8. ff. de injuriis. L. Si non convicii. C. de injuriis. Si non convicii consilio te aliquid injuriosum dixisse probare potes, fides veri a calumnia te defendit.* For though actions be still the same, yet words and papers depend much upon the inclination of the author, and therefore the intention of the author is still admitted to clear them; *et standum est* (say the lawyers) *interpretationi proferentis.* Menoch, *Presumpt. L. 5. qua intentione reus verba dixerit ab ejus animo pendet.* Berlich. *Conclus. 60 num. 18.* Gail. relates that it was so decided *L. 2. Observ. Consil. 256. Guid. 223.* And expressions much more criminal than these, are allowed to be cleared by the declaration of the writer, he having been known to be a person of candour and ingenuity. *Afflict. Decis. 163.* And the like instance is to be seen, *de senatore accusato quod in principem injurioso scripsisset,*

Menoch. Consil. 197, *L.* 12. And the severest lawyers require only the oath of the writer, which they call *juramentum purgationis*, because it purges and clears any pretended guilt; and that, in libelling injuries, the design must be proven expressly, and is not presumed, is clear by *Farin. Quest.* 195. And by *Coler. decis.* 154. *Nec aliter condemnatur reus cujuscunque generis contumelia nisi animum infamandi habuerat et cum de facto abest injuriarum judicium cessat. Math. de injuriis.* § 7. And as there can be nothing more prejudicial or dangerous, than that words or papers should be interpreted against the design of the writer, whereby ignorance or error would become crimes, so there can be no danger in allowing the writer to gloss his own words; nay what can be more advantageous to a Prince, than to be acknowledged to be a just and gracious Prince, even by those who are suspected by others, and pursued by him? Which of all other cases should hold most in this, where no injury done to his Majesty, not any misconstruing of his proceedings, is libelled, but only a tending to misconstruct, and insinuations of reflections; all which are the same terms in law, as if the defenders had only designed to misconstruct or reflect; and what can clear the design of the author of any paper, but either the context of the paper itself, or the solemn declaration of the author, or the nature of the paper presented? As to the context of the paper itself, your Lordships would be pleased to consider, that the paper quarrelled

does begin and end in most ample acknowledgements of his Majesty's authority, most humble submission to his Majesty's command, and most sincere offers of their service; and how can that paper be thought to tend to the misconstruing of his Majesty's proceedings, which does, in so many various expressions, acknowledge him to be the wisest and justest Prince alive, and that no people are so happy under any Prince as we, in being governed by him? And whatever might be said, where the words challenged contain a downright reproaching of his Majesty's government, yet where the words are at most said to be dubious, and the libel runs only upon tendencies and insinuations, what can better explain any dubious consequences, than the clear expressions which both precede and follow them? And thus even the Scriptures are allowed to be interpreted by the best divines.

“As to the intention of the authors, it cannot be presumed but they, being many lawyers, and such as have for a long time been allowed to advise the people, both in the securities of their life and fortunes, they would have been very far from drawing, or presenting any paper, which might have fixed any guilt upon themselves: and they are content solemnly to declare, that they, nor either of them, did ever directly or indirectly design to misconstrue his Majesty's proceedings, or to insinuate any thing that might reflect upon his government or judicatures. As to the nature of

the paper itself, your Lordships would be pleased to consider, that the paper quarrelled is a petition, and consequently a paper which the law presumes rather to be designed for craving of favour, than doing of injury; and therefore, in law, the words of a petition are still more favourably interpreted, than the words of any other paper. And how can it be imagined, that many reasonable men would have designed to have subscribed a paper, whereby a guilt could have been fixed upon themselves? But much less is it presumable, that they would have presented such a paper to the Privy Council: And least of all, that they would have earnestly entreated, that their paper might have been transmitted to his sacred Majesty, if they imagined that any thing in that paper could have been even impropriated, or made guilty, by the remotest consequences; especially at a time when they had reason to be jealous over the best of their actions: And to imagine that they would have designed to irritate his Majesty, in a paper wherein they craved so much his favor and protection, were to imagine them not only not to be good lawyers, but to be madmen. And our Kings, like God, (whose representatives they are,) use not to treat as crimes the petitions that are put up to them, how frail and irregular soever they be.

“ It is likewise humbly offered to your Lordships’ consideration, that though the words were dubious, and might

be capable of an interpretation very disadvantageous for the Defenders, yet if they be likewise capable of a benign and favorable interpretation, the law does allow the Defenders, *ut etiam verba improprientur, ut evitetur crimen*. But in this case, the design of the authors of that paper does very naturally appear to have been very candid and loyal; for finding that his Majesty's letters and proclamations did character them as factious, in having deserted their employment, they thought themselves bound in duty to make an address to his Majesty's Council, which is that judicature to which his Majesty has entrusted the keeping of his peace; and by them to inform his Majesty of the true grounds and motives, which prevailed with them to desert their employments; and as they conceived this a necessary duty, so they thought they had expressed the same in terms, which shew that they designed rather to inform their Prince, than to debate his commands: And there is nothing more ordinary, in this and all other nations, than with the best of subjects, to present their Prince with the reasons which straiten them, in complying with what he expected from them; and it seems too unmannerly and peremptory in any subject, to decline to obey his Majesty's commands, without informing his Majesty, and his judicatures, why they cannot come up the length that is desired. And without this, neither can their Prince be informed, nor will there be any distinction known, betwixt such as disobey wilfully, and such as are

neecessitate upon just principles to withdraw from their present employments; nor is there any way more probable for removing mistakes, than what can be expected from the freedom of such addresses. And since his Majesty's judicatures are the people's tutors, why should not the people make their address to them? And it is left to your Lordships to consider, if ordinary people will not be much stumbled how to make addresses, when such hazards may arise from the representations made by many lawyers. Likeas his Majesty allowed addresses to be made to him, and the reasons to be proponed, against the Regulations; and upon just reasons proponed by thir Defenders against the first letter, his Majesty was graciously pleased to rectify some part of it; and the Defenders are able to justify, in an equal hearing, that what they represented was law, and so to assert it was a duty, and no crime.

“ As to the subsumption, in so far as it is founded upon the disobeying his Majesty's commands, in not obeying his orders and proclamations; the Defenders humbly conceive, that his Majesty did never, to this day, positively command them any thing; and where there is no positive command, there can be no punishable contempt. For his Majesty commanded such as would not disown appeals should be debarred, but did not command them to disown appeals; and this they obeyed by retiring: and by the proclamation in

October last, his Majesty did not command them to make application to the Lords in November, but only ordered, that such as should not apply should be banished twelve miles from Edinburgh; and this they obeyed, by going to their confinement. Nor did his Majesty, by his last proclamation, command them to give in separate supplications, but declared that such as could not present such applications, should not be re-admitted to their former functions: and thus these commands being alternative, they obeyed one of the alternatives, by quitting their employments, and going to their confinements, &c. And no more is required by law, nor can any more be done by the best of subjects; for he who commands either this, or that, seems to be satisfied if either be granted; and so the obeying either, purges the contempt: *in statutis alternativis pœnam irrogantibus, pœnam evitat qui alterutri parit.* And amongst many instances, your Lordships may remember, that his Majesty and his Parliament, having commanded positively all magistrates and persons in trust to take the Declaration, such as were unclear were allowed to retire without any further trouble.

“Whereas the Defenders are charged, in the libel, for having offered to obey the Lords of Session, if they will make an Act of Sederunt, declaring protestations for remeid of law to be unlawful, and they have thereby insinuated, that they will

not obey his Majesty's commands or proclamations; the Defenders, with all humility, beg leave to declare, that they were very far from designing in this to quarrel his Majesty's power; but finding that his Majesty's letters and proclamations were relative to an opinion, transmitted to his Majesty by the Lords of Session, they humbly desired that the Lords would be pleased to make a clear Act of Sederunt, declaring such protestations to be unlawful: which point the Defenders did warrantably believe, not to have been determined by the Lords; who though they had condemned appeals, yet had till then determined nothing against protestations for remeid of law: And Acts of Sederunt being the ordinary warrants which, by the law of the nation, in the institution of the College of Justice, do regulate Advocates in their employments, the Advocates conceived that they had very good reason to desire, that an Act of Sederunt should have been made, for satisfying of both his Majesty and his people upon so solemn a point as that is. 2. This being but a mere offer of obedience made by the Advocates, it is humbly conceived that it cannot infer the meanest degree of guilt against them, nor can it be instanced that an offer of obedience, in what terms soever proposed, was ever judged a crime or guilt in the proposers; that being contrary to the very nature of the thing, and inconsistent with the design of the proposers.

“ And whereas it is, in the last place, inferred, that because the Defenders did declare in that Address, that they were to crave no more liberty and privileges than were enjoyed by their predecessors, and was necessary for the vivacity of debates, that thereby they did insinuate as if these privileges were denyed to them, or as if the Lords assumed more power than was allowed to their predecessors: To this it is answered, that in so far as concerns his Majesty's interest

Sir George Mackenzie, jealous of this retirement, intercepted at last a letter, wherein they told their confidents that they had resolved to wait the event of that process; in which, if Sir George Mackenzie was absolv'd, they would be secure by the preparative, but if he was found guilty, the malice of the pursuers would be blunted before it reacht them: which gross disingenuity did so confirm his former aversion for these principles, which he daily discover'd to have inflam'd the ignorant people beyond his first inclinations, that he resolv'd to submit to his Prince; and having call'd all the other Advocates, he represented to them, “ that they who by their profession us'd to have others depend upon them, were made daily now the instruments of other mens passions,

since they had deserted their Prince, his judicatures, and their own employments: Nor could there be any thing more ridiculous, than to see such as needed no faction to support them, become martyrs for any faction, and introduce a necessity upon their successors, of siding in all publick differences, which even the greatest fools shun'd when they could gain nothing, by being engag'd by such of the nobility as had been enemies to their profession, had brought upon them the Regulations, and taken from them an immunity from cels; and by such of their own number as had been greater tyrants over them than the worst of Kings, and had deserted them as cowardly rogues; whereas the Advocates of the former age had retain'd, in much worse times, a neutrality that made all of them necessary to the irreconcilable leaders of both sides. It was no dishonour to submit to their Prince; ceding being only dishonourable amongst equals, and never being so, when the contest was rais'd by such as design'd to make them knaves and fools. All such tumults tended to sedition, and sedition to war; in which Advocates not only became losers, but insignificant." These motives prevail'd with all who were present, save one, to sign a petition, which being transmitted to the King, was allow'd by his Majesty: and though the four who were at London decry'd it, as insinuating an acknowledgment of guilt, because they had submitted to his Majesty's clemency as well as justice, yet themselves did shortly follow their example.

June 24.

And thus that storm spent itself, without prejudice to the authority it had oppos'd; all rebellions being still found either to fix, or to destroy, the power against which they are rais'd.

The town of Edinburgh being oblig'd, in a Decreet Arbitral pronounced by King James, to choose their Magistrates upon the first tuesday after Michaelmas, did, (to prevent the ordinary disorders in drinking and caballing, that usually attend and influence such elections,) make their elections, *in anno* 1674, upon the very Michaelmas day. Whereupon their elections having been quarrelled by the Privy Council, they were discharged to make any new election, till his Majesty should intimate his further pleasure: To which Provost Currie and some others submitted; but Robert Baird the Dean of Gild, conceiving that no guilt could be fast'ned on this election, the election itself being made without any precipitation, and merely to prevent disorders, did with others refuse to acknowledge any guilt: And a design being set on foot, by the Marquis of Atholl and Lord Hatton, to have the nomination of the Magistrates declared to belong to the King, upon pretence that the town had forfeited their privileges in the reign of King James, this pretext was freely taken off by production of the town's subsequent charters, containing *novo damus*, and supplying all defects. To take off this stop, baillie Baird and his adherents sent up Sir Alexander Bruce of Broom-

hall, the Ducheſs' couſin, and Kincardine's favorite; but the deſign being oppoſed by Atholl and Hatton, Sir Alexander returned very diſcontent, and imputed his want of ſucceſs to his want of that money which the Ducheſs expected; ſo that the ſtop continued till July 1675; at which time, Sir George Mackenzie having repreſented to Hatton, how neceſſary the town of Edinburgh's aſſiſtance was, for prevailing with the Burghs to comply with his Maſteſty's commands, and how, whilſt they that were the feat of juſtice were diſſatisfied, all his Maſteſty's enemies were harboured there, and all miſreports of the government were therein hatched, and from thence ſpread abroad; Hatton was therefore prevailed with to promiſe, that this ſtop ſhould be taken off, if the town of Edinburgh would concur with his Maſteſty, in the Convention of Burghs; and if they would take the advice of his Maſteſty's Miniſters, in the preſent election of the Magiſtrates of Edinburgh. For effectuating which firſt undertaking, the Convention of Burghs having met at Glaſgow, in July 1675, this dutiful letter was procured from the Convention, with which his Maſteſty was highly ſatiſfied.

July 8.

“ At Glaſgow, July 8. 1675.

“ Moſt ſacred Sovereign, That which the laſt Particular Convention of Burghs met in January laſt, by their letter to your Maſteſty, were hopeful ſhould be performed by

a General Convention, is now actually done by us, in that we have condemned that undutiful letter sent to your Majesty by that Convention, in August last, and has razed and expunged the same out of our records; and by excluding unqualified Commissioners from our Convention, and by reviving the Acts of Burghs in relation to the qualifications of Commissioners to Parliaments, Conventions of Estate, and to our own general and particular meetings; and has fortified the same, by adding of such certifications as we are confident, by your Majesty's approbation, (which we hereby humbly intreat,) will restore us to our privileges in these points, and secure us from fears of innovation for the future.

“ The papers relating to that affair, and what other particulars may concern our estate, we shall transmit to his Grace the Duke of Lauderdale, (who has signally espoused our interest at all times, and has not been wanting to give all due encouragement to us, in our dutiful obedience to your Majesty's commands,) to be communicate to your Majesty, to be considered; that these things which are burdensome to our trade, and prejudicial to our just privileges, may be removed, by such effectual ways as seems most expedient to your Royal wisdom: Assuring your Majesty, that none within your Majesty's dominions shall be more forward and zealous, with their lives and fortunes, to serve your Majesty's interest at all occasions, than the Royal Burghs in general,

and in particular, most sacred Sovereign, your Majesty's most loyal, obedient, and dutiful subjects, &c."

Robert Baird, thinking he was supplanted by Mr. James Rocheid, who had designed to make Francis Kinloch, his father in law, Provost of Edinburgh, and who had, in order thereto, procured the letter to his Majesty to be signed when he, as Commissioner for Edinburgh, was absent; drew forth a party in the town Council against Master Rocheid's design, that after the letter was procured from his Majesty for taking off the stop, they refused to name either Francis Kinloch to be Provost, or Baillie Hay or Baillie Binnie to be Councillors; and having most injuriously treated the King's letter, they proceeded to a new election. But his Majesty being informed, that the election was carried on without any regard to the terms proposed by themselves, when the letter was procured, and that the Deacons were influenced by some fanatick ministers, who had assured them, that those to whom the King inclined were enemies to the cause of God, his Majesty did, by a letter in August thereafter, declare twelve of those who were most guilty, to be incapable of being elected, during his pleasure, and commanded the Privy Council to see a new election fairly and legally made; which was accordingly gone about upon the 3d day of September: And thereby the town, and town Council of Edinburgh, returned to have an absolute de-

Aug. 25.

Sept. 3.

pendence on the Duke of Lauderdale and his friends ; and this manner of election was justified by many instances, drawn from the Registers of the Privy Council, during the reigns of Queen Mary and King James.

The Earl of Atholl, being favourite to the Duchess of Lauderdale, as the Lord Hatton was to the Duke his brother, they both conspir'd against the Earl of Kincardine, who by his parts, and the proof he had given of them in defending Lauderdale during the Parliament 1674, was reputed by all, worthy to succeed him in his office of Secretary ; which mov'd Hatton to concur to ruin him as a rival, and Atholl to remove him as an enemy : In which neither had prevail'd, if the Duchess of Lauderdale, desirous to match her younger daughter to Atholl's eldest son, had not consented to Kincardine's fall, which was the easier for her, that he stood chiefly by her favour. The first art she us'd was to misrepresent him, for having own'd the present Magistrates of Edinburgh, against the attacks of the other two, each of which design'd to have the town govern'd by their own friends ; hoping hereby, as Kincardine informs, to draw from them considerable sums. But this proving ineffectual, and Kincardine hoping to root out the jealousy by a voyage to London, the time of the Parliament sitting there being thought a proper season for his purpose, (because he might therein have defended Lauderdale against the English Par-

liament, which was giving in violent addrefses;) that fame choice furnifht her a fair opportunity of perfuading her husband, that Kincardine was come there, whilft the Parliament was fo employed, to promote his fall, by his friends and informations, and to expect the Secretaryship, when voided by his removal. The carriage alfo of Gilbert Burnet, divine, againft Lauderdale, at that time, heighten'd much this fufpicion; he being a ftrict friend to Kincardine, and they being about that time in frequent converfations. For underftanding whereof, it is fit to know, that this Gilbert Burnet, being nephew to Wariftoun by his fifter, had with her milk drunk in that mercury which was infeparable from Wariftoun's family, and being, whilft he was very young, admitted into a familiarity with Lauderdale, becaufe of the kindnefs that Lauderdale had ever entertain'd for old Mafter Robert Burnet, his worthy and loyal father; the young man arrived very early at as much learning beyond his years, as he wanted the difcretion and folidity that was neceffary for his profefion. But being encourag'd by Lady Margaret Kennedy into an amour, ſhe, to revenge herſelf upon Lauderdale, becaufe he did not marry her, engag'd him in a plot againft Lauderdale; in purfuance whereof, Mafter Burnet, finding that the King would not part with Lauderdale upon a naked addrefs, fuggeſted to ſome of the members of the Houſe of Commons, that he could diſcover to them Lauderdale's acceſſion to the bringing in of popery: and

being examined, he depon'd upon some expressions vented by Lauderdale, in a conversation at which the Dukes of Hamilton and they two were only present. But yet the expressions being so improbable, and so capable of a good construction, though they had been spoke, and the Dukes of Hamilton having, in a letter under her hand, disclaim'd her ever having heard any such words, and Master Burnet having, in an epistle dedicatory posterior thereto, magnified the Duke of Lauderdale, as the chief pillar of the protestant religion, the odium design'd against the Duke of Lauderdale return'd to the Author; whom the best of his friends acknowledg'd to have betrayed friendship, and all indifferent men concluded to have wrong'd truth. After which accusation, it might have been expected that Kincardine, who owed so much to Lauderdale, would have shun'd to converse with that man, whom generally all honest men dislike; but he, pretending that Lauderdale should have trusted him to a greater degree, and being naturally stiff, and imagining from former observations that this was but a pretended quarrel, fell from a pet into an unkindness; which being augmented by some expressions us'd by Lauderdale against him at his table, these small differences [grew] soon into an open rupture; enemies, (as is usual in such cases,) taking much more pains to feed the discord, than friends durst to allay it. And thus Lauderdale and Kincardine were most foolishly embark'd in a war, wherein neither could expect

honour or success; since Kincardine was thereby forc'd to decry him to the King, whom he had so much magnifi'd; and Lauderdale, to make the other pass for a cheat, whom he had character'd to the King as a Nathaniel.

After this, the Duke of Lauderdale was intent upon all occasions, which might have remov'd such as were disaffected to his interest from the Council, and might lessen the Earl of Kincardine in the King's esteem; which he at last effectuated by a letter, wherein all his friends did represent to him, that the Duke of Hamilton and Kincardine retarded the King's service upon all occasions, and did, by debating for the fanatics in open Council, promote very much their interest. That which gave rise to this letter being a process against Baillie of Jerrifwood, in which he was accus'd for having rescu'd his brother in law, Master James Kirkton, from Captain Carstairs, who had apprehended him by a warrant of Council: against which pursuit, it was alleg'd by Jerrifwood, that Master Kirkton had desir'd to see the warrant, without which he was not oblig'd to render himself up prisoner, especially to a person who was not at that time in publick trust, nor known to have had any jurisdiction or publick character whatsoever; and if the alleging that he had a publick warrant was sufficient, any private person might apprehend and incarcerate the best of his Majesty's subjects, upon mere pretences, and might thereby

1676.

July 4.

disappoint their most important affairs, and such as required the greatest expedition. To which it was answer'd by Sir John Nisbet, then his Majesty's Advocate, that Captain Carstairs was not obliged to produce his commission to Kirkton, who was obliged to know that himself was a rebel; and that Carstairs had offered to shew the warrant to any Magistrate, if Kirkton would go alongst with him; but that he could not shew it to him, since there were more comprehended in the warrant beside Kirkton; and consequently, in discovering his warrant, he would thereby advertise those others who were to be apprehended; and Kirkton himself might likewise tear the warrant; whereas, upon the other hand, Kirkton could pretend no prejudice, by going to a Magistrate, who lived in the next street; nor could Jerriswood be answerable for having let the prisoner escape, upon those pretences, whom at best he should have secured, until after trial it were found, whether Carstairs was sufficiently authorised to apprehend him: All which process having been transmitted to the King, with his Majesty's Advocate's opinion, who asserted under his hand, that Jerriswood was legally fined upon this account by the Council, the King did, by a letter under his hand, remove the Duke of Hamilton and the Earl of Kincardine from being Councillors.

July 12.

In this process, it was likewise solemnly debated by those Lords, that his Majesty's Advocate ought not to plead after

parties are removed, when the process is at his own instance; it being a most unreasonable thing that matters of law and matters of fact should be urg'd, where none is to answer; by which means, both the defendants and the Council may be easily abused: and for that reason, Sir Thomas Hope us'd always, when he was Advocate, to rise and plead in presence of the parties, when he was pursuer, and to remove with them, when the Lords of Council entered upon the debate amongst themselves with close doors. Notwithstanding of all which, Sir John Nisbet was not only allowed to plead, after the parties were remov'd; but, which seems yet stranger, the King's Advocate, since Sir John Nisbet's being Advocate, was always forc'd to vote in the causes wherein he himself was pursuer; because it was pretended, that the King's Advocate being only interested *ratione officii*, and as a publick minister, it was not presumable that he would vote contrary to law: nor was this custom alter'd, till Sir George Mackenzie was admitted to be his Majesty's Advocate.

The removal of these Councillors shew, how much opposition from enemies contributes to the concord of friends; and as it seems prudent in a Prince to have some of all persuasions and factions in his Council, to the end truth may by debate be the better discover'd, and the prevailing side may, by being under the eyes of their enemies, be restrained from flying out into irregularities; so it is probable, that it had

been happy both for the country and Lauderdale, that these Lords had not been remov'd; for till then they had not, nor could they probably have complain'd, of that Council whereof they were members; and Lauderdale's friends had been free from those intestine divisions, which did immediately trouble them. For after this, Atholl relying on the Dukes' interest, he being her chief, and his son being to marry her daughter, could not endure that all publick dispatches should be sent to Hatton, or that he should have the direction of affairs; nor was the Duke unwilling to see Hatton humbl'd, in revenge of his son's refusing to marry her eldest daughter: and therefore, to alienate the Duke of Lauderdale from his brother Hatton, Atholl did, by the Dukes' influence, persuade Lauderdale that Hatton's son had refus'd that match, upon design to marry the Chancellor's daughter; which enrag'd Lauderdale extremely, foreseeing that thereby his own estate, he wanting heirs male, would be carried into the family of him who had so ingratly, as he said, deserted if not betray'd him; and which he did the more easily believe, because St. Andrew's was the entire friend both to the Chancellor and to Hatton, and because his brother Hatton had own'd the Chancellor publicly, in a process betwixt him and the Lord Melvill, though Lauderdale had recommended Melvill to all his friends, with all the latitude that law could allow. This process also did much alienate Hatton from the President of the Session, who found that Hatton

was able to sway the Session; and some picques having been secretly rais'd, by the Countess of Atholl, between the President's Lady and Hatton, the difference had become irreconcilable, if Sir George Mackenzie had not interpos'd; who did easily foresee, that the President's siding with Atholl would have completed Hatton's ruin in his brothers esteem, which was already too far advanc'd.

The Duchess of Lauderdale, finding her eldest daughter 1677.
was disappointed of a match by Master Maitland, and that Atholl delayed to match his son to her second daughter, persuaded the Duke her husband to come into Scotland; where he arriv'd July 1677; having been met at Berwick July.
by a greater confluence than us'd to attend him when he was Commissioner; for then all the Party, save five of our nobility, had comply'd, seeing the King own him against all opposition; and the fanatics were, by the Lord Melvill, the Lord President, and Glendoick her cousin, expecting great favors. And true it was that Lauderdale, unwilling to have the fanatics and Party join together, had allowed these Lords to treat with the moderate presbyterians; but thereafter their overtures were found so insolent, and the

Archbishop of St. Andrews had so alarm'd the Bishops of England, by whose favour, and by whose friends, Lauderdale was maintain'd in that loyal Parliament, that he was forc'd to desert the treaty.

Thir fanaticks, finding all their hopes disappointed, resolv'd to try by force, what they could not obtain from favour; and knowing that they might expect the connivance, at least, of the Party in opposition to Lauderdale, and the Party having blown up their expectations, by assuring them that the Parliament of England was, by many late elections, become more fanatical, they hounded out all their preachers to keep field conventicles, in such numbers and so well arm'd, and to threaten so all the orthodox clergy, and to usurp their pulpits, that the Council was much troubled at the clouds which they saw so fast gathering; and Lauderdale was the more envenom'd, that all these disorders were charged upon the late offers made by him, of an indemnity and indulgence, and the news that were industriously spread, both at London and Edinburgh, of great sums of money promis'd to his Duchesse by the fanaticks. Notwithstanding of all which, Sir George Mackenzie, being lately admitted to be his Majesty's Advocate, did prevail with the Council to prevent, by the ensuing Articles, all the fanaticks' just exceptions against the forms formerly us'd against them.

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“ It is thought fit and necessary for his Majesty's service, that the laws against such disorderly persons be exactly but regularly put in execution in manner aftermentioned :

“ 1. That his Majesty's Advocate be special as to time and place in libelling against Conventiclers and others pursued ; but so as he may libel any day within four weeks, or any place within such a parish, or near to the said parish, for else Conventicles may be kept upon confines of parishes, merely to disappoint his way of libelling.

“ 2. When any person is convened upon a libel, that in that case he be only examined upon his own guilt and accession, seeing nothing can be referred to a Defender's oath but what concerneth himself, during the dependence of a process.

“ 3. That if any person who is cited, be ready to depone, or pay his fine, he be not troubled with taking of bonds, or other engagements; seeing the constant punishment of such as do transgress will supply the necessity of the bonds, and the law itself is the strongest bond that can be exacted of any man.”

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Sir John Nisbet, a person of deep and universal learning, having disoblged my Lord Hatton, he procured a letter to the Lords of Session, ordaining them to make enquiry into his having consulted *pro et con*, in the case betwixt the Lord Chancellor and Lord Melvill, concerning the tailzie of the estate of Leven: Whereupon pains was taken with Sir George Mackenzie to accept of his place, which he not only positively refused, without a free dimission from Sir John, but went to him, with Sir Alexander Gibson Clerk of the Session, his Lady's nephew, and entreated him to stand to his defence, assuring him of his assistance: But he fearing Hatton's influence, and finding it impossible to stand in that ticklish employment, without the favour of the first Ministers, did dimit his employment under his own hand; and Sir George was nam'd by the King himself, August 23. 1677, in spite of all endeavours us'd by the Duchess of Lauderdale, to have Sir George Lockhart promoted to that place; he being her early favourite, and the trustee she employed in procuring from her husband those extraordinary donations: To balance whom, Hatton pitched on Sir George Mackenzie, to exclude the other; but not being able to prevail with his brother for this, he himself suggested it to

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Lauderdale, at this time, finding that the Chancellor, having his office *ad vitam*, could not be easily remov'd, and resolving to recommend to the King his pure dependance upon his royal favour only, obtained a letter from his Majesty to the Council, wherein his Majesty declar'd that it was necessary for his service, that all his Officers of State should depend immediately upon himself, and that he should not be forc'd to raise processes against them, many being unfit to serve him in those immediate trusts, whom he could not remove by a formal process; and therefore he hoped, that the present Officers of State would renounce their rights for life, and declare themselves to hold these employments only during pleasure, as their predecessors had ever done, and as was usual in all other kingdoms. Upon reading of which letter, all the Officers of State did emit this declaration, which was drawn by his Majesty's Advocate, and signed by them upon the 4th September 1677; in which none was more cordial than the Chancellor, though some of his friends advis'd him to signify, that he would make this resignation to the King himself, and that seeing himself aim'd at in this design, he would make use of this opportunity of going to see the King. But the Chancellor, considering that the design was reasonable in itself, and could not but be very

Aug. 23.

Sept. 4.

agreeable to the King, and knowing that Lauderdale was easily able to remove him, if they came to an open breach, resolv'd more wisely to recommend himself to the King, by his hearty compliance, than by too uncertain a journey. Such as understood not this intrigue, admir'd much why Lauderdale did lay his friends and adherents open to such hazards, by having those employments only during pleasure, which otherwise they might easily have retain'd after his death, in spite of their enemies: and many thought, that this would make the Officers of State liable to too much compliance with all court designs, and all the influence of favorites; whereas it could not but have been expected, that such as could not have been remov'd without a crime, would have thereby been more inclin'd to justice, having nothing to fear save guilt and crimes.

These irreligious and heterodox books called "*Nepthali*," and "*Jus populi*," had made the killing of all dissenters from presbytery seem not only lawful, but even duty, amongst many of that profession; and in a postscript to "*Jus populi*," it was told, that the sending the Archbishop of St. Andrews' head to the King, would be the best present that could be made to Jesus Christ. Animated by which principles, one Master James Mitchell, a profligate fellow, who for scandal and ill nature had been thrown out of the Laird of Dundas's house, where he serv'd as chaplain, did in July 1668, watch

to kill that Archbishop; till wearied with want of opportunities, he at last shot at him in his own coach upon the publick street, and at the foot of his stairs. But Providence so order'd it that he miss'd him, but shot the Bishop of Orkney, who was in coach with him, leaving the small leads in his arm; of which wound he languish'd till his death. Mitchell having in the crowd escap'd, every man running to the Archbishop, he lurkt that night in the garden that belonged to the Lord Oxenford, in the Cowgate, and from thence pursu'd by his own conscience fled to Holland; but was by Divine Providence, which design'd him for a sacrifice, instigated to come home; where being taken at a burial, he deny'd the fact, albeit the pistol was taken about him; and being brought to the Council in February 1674, he was referred to a Committee; but desiring to speak with the Chancellor, and he having taken him in to another room, he fell upon his knees, and confess'd the whole matter, without asking either life or promise of any favour. When his Lordship return'd, Sir John Nisbet, who was then Advocate and one of the Committee, prest that he might sign his confession; which he did, and renew'd his confession before the Council, the Duke of Lauderdale then Commissioner being present, without interceding for his life on either of these occasions. Whereupon the Council, who were jealous that he might retract his confession, order'd him to be pursu'd criminally; having only design'd to cut off his right hand,

if he should adhere to his confession. But he, being persuaded that extrajudicial confession was not binding, refil'd; whereupon the Council declar'd, that he had forfeited any promise that was made to him; and being sent prisoner to the Bass, he continu'd there till December 1677: at which time new discoveries having been made of a design to kill the Archbishop, Sir George Mackenzie, his Majesty's Advocate, was ordain'd to proceed against him; and a libel being given him, founded upon the 4. Act of 16 parl. Ja. 6. whereby the invading Privy Councillors is death, Sir George Lockhart was, at my Lord Advocate's earnest desire, appointed to plead for him: And he having rais'd an exculpation, in which he offer'd to prove that, if he emitted any confession, it was upon promise of life *et spe veniæ*, this was admitted to his probation: And having led the Duke of Lauderdale, the Chancellor, Hatton, and some others, they all depon'd, that they knew of no promise given antecedently to his confession, and so he could not be said to have confest upon promise of life: After which, his Advocates desiring that the Act of Council might be read for proving their exculpation, that was justly refus'd, because no man can make use both of writ and witnesses; and the truth was, that the Act of Council, being posterior to the confession, could not prove that the confession was emitted upon promise of life; and that Act design'd to annul the confession, and so could not be made use of for astructing it. Probation

being thus led, and his Majesty's Advocate having spoke to the assise, Sir George Lockhart refus'd to speak for Mitchell, being unwilling to offend Lauderdale; for which many blam'd him in this, as they did his management of the process in not adducing the Act of Council first: and the assise having all in one voice found the pannel guilty, he was hang'd, railing against the King and the Council, without any contrition for his personal sins. [Jan. 9. 1678.]

The fanatics continuing still their insolencies, to that height that the orthodox clergy were forc'd to abandon their churches and homes, and fresh intelligence coming daily of their preparations to rebel, even from the Lord Dundonald, a most cautious Privy Councillor, and from the President of the Session, who always favour'd them, the Duke of Lauderdale thought it his duty to inform the King of the whole scheme of affairs, and of some offers made by the Earl of Atholl, Marr, and others, of bringing out their Highlanders, to repress their designs, before they were ripen'd into a rebellion. For it was most easy for two or three Conventicles, by joining together, to make an army of ten thousand men, to whom all of that persuasion would probably gather; against whom, the King could only oppose his own standing forces, not exceeding fifteen hundred in all: nor could his Majesty probably expect great assistance from the militia, which consists of commons much inclin'd to that opinion,

the heritors also being inclin'd to the Party. In return to which the King wrote a letter, commanding an host to be rais'd and led into the west, where they should take free quarter from such as refus'd to secure the peace: But yet, to
Oct. 27. make the western shires more inexcusable, this letter was direct to the Earls of Glencairn and Dundonald, and the Lord Rofs, to be communicated to them.

“ My Lords, “ Edin. 27. October 1677.

“ There having been frequent informations sent in here, of extraordinary insolencies committed; not only against the present orthodox clergy, by usurping their pulpits, threatening and abusing their persons, and setting up of conventicle houses for keeping of scandalous and seditious field conventicles, the great seminaries of rebellion, but likewise of the great prejudice that is like to arise to his Majesty's authority and government, and to the peace of the kingdom in general; We did therefore think it necessary, in a frequent meeting of Council, this morning, to require your Lordships to send particular expresses with sure bearers, for calling together the Commissioners of the Militia and Excise, and Justices of Peace, specified in the list herein inclosed; And when they meet at Irvine, the second day of November next, that you seriously represent to them, how highly we do, in his Majesty's name, resent the foresaids outrages and

affronts done to the government, in these shires of Air and Renfrew; which have been frequently represented to be the most considerable seminaries of rebellion in this kingdom, though none has more eminently tasted of his Majesty's clemency, nor has his Majesty indulg'd any shires so much as these: And albeit his Majesty's service, and the quiet of the kingdom, would require such severe courses to be taken, for curbing these insolencies, as might prejudice very much the heritors of the said shires, yet his Majesty and his Council, being further desirous to make them inexcusable, and to the end the kingdom may see, that the prejudice even of heritors shall arise from their own negligence: Therefore we thought fit, that the foresaid persons should be called together in a meeting, and under characters allowed by the Parliament, for that effect that they may deliberate upon, and take such effectual course in the affairs of the said shires, and for quieting the same, in obedience to his Majesty's laws, (which is the true and only measure of faithfulness and loyalty,) as may prevent these necessary and severe courses that must be taken, for securing the peace in these parts: In which if they failzie, (which will be thought very strange, where there is no force to oppose them,) we are fully resolv'd to repress by force, and his Majesty's authority, all such rebellious and factious courses, without respect to the disadvantage of the heritors, whom his Majesty will then look upon as involv'd in such a degree of guilt, as may allow the

greatest severity that can be used against that country: So, expecting you will represent this to the meeting, and that they will show their ready compliance and obedience herein, and will send us a full account of what passes in that meeting, or elsewhere in these shires, we continue your affectionate friends."



Mackenzie, George,

Memoirs of the Affairs of Scotland from the restauration of King Charles
II. A. D. MDL

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